

Page 1

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 18-23538-rdd

4 - - - - - x

5 In the Matter of:

6

7 SEARS HOLDINGS CORPORATION,

8

9 Debtor.

10 - - - - - x

11

12 United States Bankruptcy Court

13 300 Quarropas Street, Room 248

14 White Plains, NY 10601

15

16 February 4, 2019

17 10:59 AM

18

19

20

21 B E F O R E :

22 HON ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: RAI

Page 2

1 HEARING re Notice of Agenda of Matters Scheduled for Hearing  
2 on February 4, 2019 at 10:00 a.m.

3

4 Debtors' Motion for Approval of Global Bidding Procedures  
5 (ECF #429)

6

7 Objection and Reservation of Rights of Pension Benefit  
8 Guaranty Corporation to Debtors' Sale Motion (ECF #2002)  
9 Objection of Service.com (ECF #2029, 2037, and 2130)

10

11 Objection of the Official Committee of Unsecured Creditors  
12 to Sale of Substantially All of the Debtors' Assets to ESL  
13 Investments, Inc. (Unredacted ECF #2309)

14

15 Preliminary Omnibus Objection of the Official Committee of  
16 Unsecured Creditors to ESL Proofs of Claim (ECF #2025)

17

18 Responses to Cure Amounts and Adequate Assistance:  
19 Objection of Waste Management National Services, Inc. and  
20 its Affiliates (ECF #1783)

21

22 Limited Objection of Sears Hometown and Outlet Stores, Inc.  
23 (ECF 1835)

24

25 Cure Objection by Microsoft (ECF #1842)

Page 3

1 Cure Objection by LinkedIn (ECF #1852)

2

3 Ramco Jackson Crossing SPE, LLC's Limited Objection and  
4 Reservation of Rights (ECF #1859)

5

6 Limited Objection of National Distribution Centers, LLC (ECF  
7 #1864)

8

9 Objection of Little Caesar Enterprises, Inc. (ECF #1865)

10

11 Objection of Blue Cross and Blue Shield of Illinois (ECF  
12 #1876)

13

14 Limited Objection and Reservation of Rights of SAP  
15 Industries, Inc. (ECF #1886)

16

17 Limited Objection of Cross Country Home Services, Inc.  
18 (ECF#1893)

19

20 Limited Objection of Realtor Carl Ireland, Administrator of  
21 the Estate of James Carbe (ECF#1931)

22

23 Response of Everlast World's Boxing Headquarters  
24 Corp.(ECF#1980)

25

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1 Limited Objection of Salesforce.com, Inc. (ECF#1881)

2

3 Supplemental Objection of Salesforce.com(ECF#2252)

4

5 Objection of Cisco System (ECF#1988)

6

7 Cure and Adequate Assurance Objection by Brooks Shopping  
8 Center Partners, LLC (ECF#1990)

9

10 Sales, Cure, and Adequate Assurance Objection by Westfield,  
11 LLC and Certain of its Affiliates (ECF#1991)

12

13 Oracle's Limited Objection (ECF#1992)

14

15 Google LLC's Limited Objection (ECF #1995)

16

17 Limited Objection of Icon DE Holdings LLC and Icon NY  
18 Holdings LLC (ECF#2000)

19

20 Objection of Bonnier Corporation (ECF#2005)

21

22 Objection of Adam Levine Productions, Inc.. (ECF#2009)

23

24 Limited Objection of Luxottica Retail North America  
25 Inc.(ECF#2011)

Page 5

1 Objection of Santa Rosa Mall, LLC (ECF #2013)

2

3 Royal Consumer Products, LLC's Objection (ECF#2014)

4

5 Limited Objection of DPS Services LLC (#2024)

6

7 Objection of Site Centers Corp., et Al (ECF #2069)

8

9 Objection of Stanley Black & Decker (ECF #2072)

10

11 Limited Objection of Simon Property Group, L.P. (ECF #2082  
12 and #2214)

13

14 Response of Wilmington Trust, National Association, as  
15 Collateral Agent (ECF#2089)

16

17 Supplemental Objection of Weingarten Realty Investors  
18 (ECF#2093)

19

20 Declaration of Lee Brody (ECF#2218)

21

22 Limited Objection of Acadia Realty Limited Partnership, et  
23 al (ECF #2153)

24

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1 P R O C E E D I N G S

2 THE COURT: Please be seated. Good morning. In  
3 RE: Sears Holdings Corporation, et al.

4 MR. SCHROCK: Good morning, Your Honor. Ray  
5 Schrock of Weil, Gotshal, and Manges on behalf of the  
6 Debtors. I'm here with my partners today, Sunny Singh,  
7 David Lender, Paul Genender, and Jared Friedmann.

8 THE COURT: Okay. Good morning.

9 MR. SCHROCK: Your Honor, thank you for seeing us  
10 and as you know, today's a very -- and over the next couple  
11 of days are very important days for Sears, its tens of  
12 thousands of employees, and other stakeholders.

13 Before we get into -- I know that Your Honor  
14 wanted to go through a few preliminary items before we get  
15 started, but just for the benefit of parties in interest,  
16 our understanding of the schedule today is that we're going  
17 to go until I think about 1:30 or so today and then we have  
18 a full day scheduled for beginning at 9 a.m. on Wednesday.

19 THE COURT: That's correct.

20 MR. SCHROCK: And then I know you had a couple of  
21 hours reserved for us on Thursday to the extent needed.  
22 We've been discussing with the Creditors' Committee just  
23 given the time sensitivity and the Debtors do intend and  
24 hope to close the sale if the Court approves it on this  
25 Friday, but given the time sensitivity we were talking about

Page 21

1 how do we make sure we have equal time here and we have  
2 enough time to put it on, our suggestion was just having a  
3 four-hour clock for each side and then that way it'll keep  
4 it moving. So if somebody's asking questions, we can start  
5 clicking it off. We think that we're certainly going to be  
6 done well within that four-hour timeframe and if we wanted  
7 to -- I think the Creditors' Committee asked if we could  
8 have closing on Thursday. We're fine with that, just having  
9 closing arguments on Thursday morning. If --

10 THE COURT: I contemplated Thursday just to be  
11 closing arguments.

12 MR. SCHROCK: Yes.

13 THE COURT: Not for any evidentiary --

14 MR. SCHROCK: Right.

15 THE COURT: -- portion.

16 MR. SCHROCK: And, Your Honor, if we finished  
17 early on Wednesday, we're also amenable to closing on  
18 Wednesday, but again, it's not -- we're fine closing on  
19 Thursday morning as well.

20 THE COURT: Okay.

21 MR. SCHROCK: Is that okay, Abid?

22 MR. QUERESHI: Sure. Good morning, Your Honor.

23 THE COURT: Morning.

24 MR. QUERESHI: For the record, Abid Qureshi, Akin  
25 Gump, on behalf of the Committee. We would prefer closing

Page 22

1 on Thursday regardless of what time we happen to get through  
2 the evidence by Wednesday. I think the plan --

3 THE COURT: Well, let's see where we are. I mean,  
4 if you all finish by 2 on Wednesday then, you know, I might  
5 say take a couple hours and come back to me at 4. We'll  
6 see. But right now, that time's available and I'm assuming  
7 that I'll hear closing arguments then.

8 MR. QUERESHI: Okay. I mean, from our  
9 perspective, Your Honor, we think it would just allow for  
10 more efficient presentations to the Court to have the  
11 benefit of overnight Wednesday to Thursday. Beyond that,  
12 Your Honor, I think it is our expectation that we will be  
13 able to move through the witnesses in the time allotted. We  
14 don't think the strict chess clock is really the kind of  
15 thing that works --

16 THE COURT: Well, I'll just keep an eye on things.  
17 I mean, I have the witness declarations which I've reviewed  
18 and I'll just -- you know, if I think people are going over  
19 old ground or going over ground that I don't need to hear,  
20 I'll cut you short.

21 MR. QUERESHI: Precisely.

22 THE COURT: Both of you.

23 MR. QUERESHI: Your Honor, just a couple more  
24 logistical items. So we have, I believe, three witnesses  
25 where we have agreed to designate deposition testimony.

Page 23

1 THE COURT: Okay.

2 MR. QUERESHI: And we will have that to Your Honor  
3 that contains the designations of both sides by this  
4 evening. Certainly, Your Honor will have it by tomorrow.

5 THE COURT: Okay. And one will be blue magic  
6 marker and one'll be --

7 MR. QUERESHI: Exactly.

8 THE COURT: -- yellow or --

9 MR. QUERESHI: It will be clearly distinguished as  
10 to who is designating what.

11 THE COURT: Okay.

12 MR. QUERESHI: Only one of those witnesses, Your  
13 Honor, is a witness that had been scheduled to testify live  
14 and that's Jan Kniffen, the Committee's expert with respect  
15 to the business plan. Both ESL and the Debtors have agreed  
16 to, as I understand it, way of cross of examination and in  
17 lieu of that just designate from the deposition testimony,  
18 and so with respect to Mr. Kniffen, the only question is  
19 whether the Court or any other parties would like Mr.  
20 Kniffen present to be available for cross examination on  
21 Wednesday. Otherwise, we would not ask him to be  
22 (indiscernible).

23 THE COURT: All right. Well, you should let  
24 counsel -- if there's anyone out there that wants that, you  
25 should let counsel know today.

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1 MR. QUERESHI: Thank you, Your Honor.

2 THE COURT: Okay.

3 MR. SCHROCK: Your Honor, just very quickly in  
4 terms of preliminaries, we did file a revised sale order  
5 last night with an initial list of contracts that the  
6 Debtors intend to designate for assumption and then there's  
7 an extended period, a 60-day period, pursuant to which  
8 parties can review -- the buyer can review and decide  
9 whether to assume any other pertinent contracts.

10 THE COURT: Is that order the same that was in my  
11 binder or is it another order?

12 MR. SCHROCK: It's another one, Your Honor.

13 THE COURT: Okay.

14 MR. SCHROCK: It has some changes to it and some  
15 resolutions to objections.

16 THE COURT: Is it blacklined against the one that  
17 was in my binder or against the original?

18 MR. SCHROCK: Yes, it is --

19 THE COURT: The former?

20 MR. SCHROCK: Yes.

21 THE COURT: Okay. All right.

22 MR. SCHROCK: And, Your Honor, I'm happy, to the  
23 extent it's helpful, we can -- I could read a list at least  
24 of those objections that we have scheduled to either go  
25 forward or have resolved just for the benefit of parties; or

Page 25

1 would you like to just get started with the evidence?

2 THE COURT: Well, I have the agenda.

3 MR. SCHROCK: Yes.

4 THE COURT: And I have your chart of objections  
5 and responses.

6 MR. SCHROCK: Yes.

7 THE COURT: So are there changes from that, of  
8 more that have been resolved?

9 MR. SCHROCK: Yes, Your Honor, there are a few --

10 THE COURT: Okay.

11 MR. SCHROCK: -- that have been --

12 THE COURT: Well, maybe you should set those out  
13 just so --

14 MR. SCHROCK: Okay. Yeah, let's --

15 THE COURT: -- we're clear on that.

16 MR. SCHROCK: We can go ahead and do that. So  
17 these are the objections that we have listed as going  
18 forward because there being designated for assumption and  
19 assignment or we're otherwise planning to deal with the  
20 objection during the sale hearing. If we don't read the  
21 name of the party on this list, then at least from the  
22 Debtors' perspective, we presume that that objection is  
23 being adjourned because it relates primarily to a cure issue  
24 or a contract that is being -- is not currently being  
25 designated for assumption.

1 THE COURT: Okay.

2 MR. SCHROCK: So the first one that we have as  
3 pending is Waste Management National Services. That's at  
4 ECF Number 1783. That is still pending and intend to go  
5 forward. One that's been resolved, Microsoft Corporation  
6 and Affiliates. That -- the cure issue has been adjourned  
7 but the assumption and assignment objection has been  
8 resolved. LinkedIn Corporation at ECF Number 1852, the cure  
9 has been adjourned but the assumption and assignment  
10 objection remains pending.

11 THE COURT: I have on your chart that that one was  
12 resolved.

13 MR. SCHROCK: It has. LinkedIn --

14 THE COURT: Yeah.

15 MR. SCHROCK: It is -- yeah, that is still pending  
16 but we're working on resolving it, Your Honor.

17 THE COURT: Okay. All right.

18 MR. SCHROCK: Also ECF 1859 which is Ramco Jackson  
19 Crossing SPE, LLC. That objection has been resolved.  
20 National Distribution Centers, LLC at ECF Number 1864 and a  
21 supplemental objection at 2376. That objection remains  
22 pending. Next is Blue Cross and Blue Shield of Illinois at  
23 ECF Number 1876. That objection has been resolved. Number  
24 7, SAP Industries, SAP America, Inc., and Concur Technology,  
25 Inc., which is ECF Number 1886; that has been resolved.

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1                   Cross Country Home Services, Inc. at ECF Number  
2        1893 has been resolved. Chubb Companies which is at ECF  
3        Number 1900 remains pending. Carl Ireland, Administrator of  
4        the Estate of James Garbe, G-A-R-B-E, remains pending.  
5        (indiscernible) Insurance Company, ECF Number 1943, remains  
6        pending. SalesForce.com at ECF Number 1981 and supplemental  
7        at 2252, the cure objection is adjourned. The other  
8        objections relating to assumption and assignment and  
9        adequate assurance remain pending.

10                  Cisco Systems at ECF Number 1988 has -- the cure  
11        objection has been adjourned. The assumption and assignment  
12        objection and adequate assurance remains pending. Brooks  
13        Shopping Center Partners, LLC at ECF Number 1990 has been  
14        adjourned but there is one issue, I believe, that remains  
15        pending which is just relating to adequate assurance.  
16        Westfield, LLC which is ECF Number 1991, certain that the  
17        cure and other issues have been adjourned but there's a  
18        pending objection relating to designation procedures.

19                  Oracle which is at 1992 has been resolved in part  
20        but still has assumption and assignment and adequate  
21        assurance pending. Google, LLC at ECF Number 1995 has been  
22        adjourned. Adam Levine Productions, Inc. at ECF Number 2009  
23        has -- the cure objection has been adjourned, but adequate  
24        assurance is pending. Luxottica Retail North America, Inc.  
25        at ECF Number 2011 has been resolved.

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1                   Santa Rosa Mall, LLC at 2013 remains pending.  
2                   Royal Consumer Products, LLC at 2014 remains pending. DF  
3                   Services, LLC at ECF Number 2024 remains pending.  
4                   (Indiscernible) Development Company, LLC and Affiliates at  
5                   ECF Number 2069 and a supplemental objection at 2093 has  
6                   been adjourned in part but remains pending as to designation  
7                   procedures and other issues.

8                   Stanley Black & Decker, Inc. at ECF Number 2072  
9                   remains pending. Simon Property Group, LP which is at ECF  
10                  Number 2082 and ECF Number 2214 has been adjourned and  
11                  remains -- has been adjourned or resolved in total.  
12                  Wilmington Trust, N.A. which is at ECF Number 2089 has been  
13                  resolved. Acadia Realty Limited at ECF Number 2153 remains  
14                  pending and adjourned in part. Mien Company, M-I-E-N,  
15                  Company Limited, Helen Andrews, Strong Progress Garment  
16                  Company, Limited, and (indiscernible) Solutions at ECF  
17                  Number 2318 has been adjourned.

18                  Icon Delaware Holdings at ECF Number 2000 with a  
19                  supplemental objection at 2370 is adjourned with a -- I'm  
20                  sorry, with one clarification. That there's just part of  
21                  this -- part of their objection that remains pending. And  
22                  then of course the objection of the UCC, the PBGC, and  
23                  Services.com, all of those objections remain pending.

24                  So in large part, Your Honor, what we've tried to  
25                  do is we've tried to just resolve those objections that we

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1 can, cure objections, of course, that are for contracts that  
2 have been designated for assumption and assignment that have  
3 been adjourned and the buyer is just reserving for those  
4 issues. We also are working with a group of landlords that  
5 are either formally or informally represented by Mr. Lehane  
6 on working out a set of procedures related to -- to try and  
7 resolve issues, so we're going to be working through those  
8 issues over today and tomorrow, and so we'll hope to be able  
9 to report that those issues are, in fact, adjourned.

10                 But unless we called out a specific objector, we  
11 have designated the objection as being adjourned and we were  
12 not planning on dealing with the issue. To the extent  
13 parties have questions or issues, our colleagues from Weil  
14 are here and we can talk to you about whether or not and  
15 hopefully try and clear up some of the ancillary objections  
16 to the sale.

17                 THE COURT: Okay. What I would ask those who  
18 think that they may still have a (indiscernible) objection  
19 that was not addressed by Mr. Schrock, if you can speak to  
20 one of the Weil Gotshal lawyers about that before we resume  
21 tomorrow morning.

22                 MR. SCHROCK: Wednesday morning.

23                 THE COURT: I'm sorry, Wednesday morning. We're  
24 not going to get to most of these objections today, if any  
25 of them. I think we're just going to get through a partial

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1 -- portion of the Debtors' case.

2 MR. SCHROCK: Yeah, so we were intending just to  
3 move straight into the evidence and then have legal argument  
4 at the conclusion of the evidentiary hearing from here, Your  
5 Honor.

6 THE COURT: Okay.

7 MR. SCHROCK: So with that, Your Honor, I'll turn  
8 the podium over to my partner, Mr. Lender or Mr.  
9 (indiscernible). Have him take it from here. Okay.

10 MR. QUERESHI: Apologize, Your Honor. Again for  
11 the record, Abid Qureshi. Our understanding was that before  
12 we get to the evidence this morning, we would address issues  
13 concerning the release and we are prepared to do that. I'd  
14 like to do that, whether before or after the Debtor, I  
15 think.

16 THE COURT: Well, I actually have questions on the  
17 document --

18 MR. QUERESHI: Sure.

19 THE COURT: -- as it pertains to the release, so  
20 why don't I go through those and then we can see whether  
21 there's --

22 MR. QUERESHI: Yeah.

23 THE COURT: -- in response to that, whether  
24 there's anything more to discuss on that.

25 MR. SCHROCK: And, Your Honor, I also had just a

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1 couple updates on just where we are in relation to closing  
2 the supervised parties, which issues have been resolved.  
3 But yeah, let's go through the release.

4 THE COURT: Okay. I -- this is really just on how  
5 the asset purchase agreement works, not on the merits of the  
6 release. It's just on how the asset purchase agreement  
7 works. So I confess I'm using the originally filed version  
8 because I don't think it's changed as to this language.

9 MR. SCHROCK: It has not.

10 THE COURT: Okay.

11 MR. BASTA: It has not, Your Honor. There is some  
12 language that is going back -- Your Honor, our view is that  
13 the release --

14 THE COURT: Can you state your name for the  
15 record?

16 MR. BASTA: Yes, Your Honor. Paul Basta from  
17 Paul, Weiss on behalf of the Subcommittee.

18 THE COURT: Right.

19 MR. BASTA: Where we are with ESL is that we think  
20 the release language works. There's this concept of  
21 purchased assets which -- where they're purchasing  
22 essentially causes of action --

23 THE COURT: Well, there. That's just where I --  
24 let me cover that, then.

25 MR. BASTA: Okay.

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1                   THE COURT: If you look at the definitions here,  
2       the term action includes any Claim -- upper case C, Claim --  
3       and claims is also defined quite broadly, basically follows  
4       the bankruptcy definition of a claim under 1015 and then  
5       when you get to the purchased assets, it includes actions.

6                   MR. BASTA: Right.

7                   THE COURT: So there is a specific carveout for  
8       avoidance actions --

9                   MR. BASTA: Right.

10                  THE COURT: -- but the claims that are not  
11       released include more than avoidance actions.

12                  MR. BASTA: Right.

13                  THE COURT: So that really needs to be clarified.

14                  MR. BASTA: So, Your Honor, that is the topic of  
15       language that's been going back and forth.

16                  THE COURT: I hope that's an optimistic sign, that  
17       that's to be resolved. All right. All right. I'm sorry.  
18       There (indiscernible) people on the phone and someone  
19       must've taken it off their mute button.

20                  MR. BASTA: Your Honor, there was language going  
21       back and forth between the Subcommittee and ESL which is an  
22       amendment to that language --

23                  THE COURT: Right.

24                  MR. BASTA: -- to make it clear that the concept  
25       of purchased assets doesn't --

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1 THE COURT: Include any non-released claim.

2 MR. BASTA: -- any non-released claims.

3 THE COURT: Okay.

4 MR. BASTA: And that language is going back. It's  
5 not quite finished yet --

6 THE COURT: All right.

7 MR. BASTA: -- but we are working on it and will  
8 show it to the Committee.

9 THE COURT: Okay.

10 MR. BASTA: But we agreed with the Court that that  
11 needs to be clarified.

12 THE COURT: All right, well I'm glad that we're on  
13 the same page on that. Now, when you turn to the release  
14 language which is in Section 9.13, I think I understand the  
15 intent of this, but I am concerned about a couple of points  
16 in Section 9.13 and how they relate to each other.

17 MR. BASTA: Okay.

18 THE COURT: There's a -- as I understand the  
19 structure of this, there are certain claims that are  
20 released, in essence tied to the right to credit bid, and in  
21 addition certain claims of ESL are allowed in some cases  
22 with a cap. And then there's a carveout of everything else  
23 and then there's for the avoidance of doubt language that  
24 includes specific things that have been identified.

25 I guess the point I want to make sure of here is

1 that it's clear that the allowance for credit bid purposes  
2 and the allowance generally, even with the cap, will not  
3 have any collateral estoppel or res judicata effect on the  
4 other preserved causes of action. Grounds for equitable  
5 subordination, for example, can include breach of fiduciary  
6 duty, so I just want to make sure that there's no back door  
7 argument.

8 MR. BASTA: That's certainly the intent, Your  
9 Honor.

10 THE COURT: Right.

11 MR. BASTA: We will --

12 THE COURT: And that's what I understood, but I  
13 just want the document to be -- I think it should be made  
14 clear on that point and those were my two points.

15 MR. BASTA: Your Honor, you referred to a cap.

16 THE COURT: Well, that's on the 507.

17 MR. BASTA: On the 507(b) --

18 THE COURT: Right.

19 MR. BASTA: -- but we're not allowing 507(b)  
20 claims.

21 THE COURT: I understand.

22 MR. BASTA: But if someone wants --

23 THE COURT: But if it is allowed, it's capped.

24 MR. BASTA: If it is allowed, it's capped.

25 THE COURT: But the unsecured claims are allowed.

1 MR. BASTA: The unsecured claims --

2 THE COURT: The deficiency claim.

3 MR. BASTA: -- are allowed. The deficiency claim  
4 is allowed and the deal on that was it was because the  
5 assets that are remaining in the estate is the litigation.  
6 It was dealt through --

7 THE COURT: Rights to recover from that mediation.

8 MR. BASTA: -- rights to recover. Right.

9 THE COURT: I understand. But one could  
10 conceivably argue that that allowance might be -- have a  
11 preclusive effect on the other --

12 MR. BASTA: We will --

13 THE COURT: -- the other cause of action that are  
14 specifically preserved for the benefit of Sears' estate.

15 MR. BASTA: We will get that clarified with ESL  
16 during the course of the hearing.

17 THE COURT: Okay. All right. So I don't know if  
18 you had other document points to raise on that issue.

19 MR. QUERESHI: I do, Your Honor.

20 THE COURT: Okay.

21 MR. QUERESHI: And if I could, we have just a  
22 couple of pages where we've extracted some of the language  
23 that we're concerned about.

24 THE COURT: Okay.

25 MR. QUERESHI: And what I'd like to do is walk the

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1 Court through that and I think this is quite simply a  
2 situation where if we're reading the language wrong, ESL and  
3 the Debtors can make that clarification on the record and  
4 then we can get what we think would be necessary amends to  
5 the APA to make it clear.

6 THE COURT: Okay.

7 MR. QUERESHI: May I approach, Your Honor?

8 THE COURT: Sure. Thanks.

9 MR. QUERESHI: So, Your Honor, if I can jump ahead  
10 a little bit here. The language that is of concern to us  
11 which is extracted on the first page here is the covenant  
12 that precludes a challenge dispute or collateral attack on  
13 the ESL plans.

14 THE COURT: Right.

15 MR. QUERESHI: We're simply uncertain as to what  
16 the intent of that provision is and exactly what it means,  
17 and perhaps the best way to illustrate this, Your Honor, is  
18 if the Court jumps ahead all the way to Page 7.

19 THE COURT: Of your --

20 MR. QUERESHI: Of the demonstrative.

21 THE COURT: -- exhibit here?

22 MR. QUERESHI: Right. And what we've included on  
23 Page 7 are the counts in the proposed complaint that we  
24 attached to our standing motion. And our understanding of  
25 which of those claims have been released as against ESL,

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1 because our standing motion and complaint is just claims  
2 against ESL and which have been preserved, and I think  
3 principally where the area of dispute is concerns two. If  
4 Your Honor sees there the 2016 to 2018 ESL contributions, so  
5 that's the defined term we use in the complaint.

6 Those are primarily real estate loans that are in  
7 Count 6 and 7 of the complaint, our read of -- we are  
8 uncertain whether the way this release functions the  
9 Committee, the estate, would still be able to sue ESL and/or  
10 its principals on account of those loans which we have  
11 alleged to be either constructive or actual fraudulent  
12 conveyances or whether that claim would be precluded based  
13 on the collateral attack language that is included in the  
14 release.

15 THE COURT: See? I mean, this is the -- it's kind  
16 of a (indiscernible) on my point. I viewed the allowance  
17 and release simply tied to letting -- one, letting ESL  
18 credit bid, and two -- so the credit bid is never going to  
19 be challenged. You can't undo the transaction because that  
20 happens. And two, the allowance of ESL's deficiency claim.  
21 But to me, all other rights are preserved.

22 MR. QUERESHI: Right. So, Your Honor --

23 THE COURT: Is that the Debtors' understanding?

24 MR. QUERESHI: Please.

25 THE COURT: All of the claims.

1 MR. BASTA: Yes, Your Honor. We'd asked the  
2 Committee to give us whatever comments they had --

3 THE COURT: Right.

4 MR. BASTA: -- to the release, so if they have  
5 these questions which they would've told us before today --

6 THE COURT: Well, it's good to clear it up. I  
7 mean, I -- that's fine.

8 MR. QUERESHI: We actually did --

9 MR. BASTA: Yeah, well --

10 MR. QUERESHI: -- different answers.

11 MR. BASTA: Well, the answer is everything is  
12 preserved. Now --

13 THE COURT: Well, not everything, because --

14 MR. BASTA: Not everything.

15 THE COURT: -- the right to credit bid and there's  
16 no right to reach back and say that that credit bid was --  
17 should be undone because of equitable subordination or  
18 recharacterization or whatever other reason.

19 MR. BASTA: If Your Honor looks at Page 7 of the  
20 Committees' demonstrative --

21 THE COURT: Right.

22 MR. BASTA: And you go down and you say, equitable  
23 subordination and recharacterization are released.

24 THE COURT: Right.

25 MR. BASTA: Then you get to the fraudulent

1 transfer.

2 THE COURT: Right, all the other Xs.

3 MR. BASTA: And you go to these other Xs.

4 THE COURT: Right.

5 MR. BASTA: And the right to credit bid cannot be  
6 undone.

7 THE COURT: Right.

8 MR. BASTA: So you can see if the estate went to  
9 ESL and said it was a fraudulent conveyance, if the remedy  
10 that you were seeking --

11 THE COURT: The credit bid itself was a fraudulent  
12 conveyance?

13 MR. BASTA: No, if the loan that was used --

14 THE COURT: Right.

15 MR. BASTA: -- to credit bid --

16 THE COURT: Right.

17 MR. BASTA: -- was a fraudulent conveyance, our  
18 view is that claim is preserved, you just can't recover from  
19 NewCo to unwind the transaction.

20 THE COURT: Right.

21 MR. BASTA: But your fraudulent conveyance claim -  
22 -

23 THE COURT: You can recover from ESL --

24 MR. BASTA: -- on ESL is still preserved.

25 THE COURT: That's how -- that's certainly how I

1 interpret it.

2 MR. BASTA: That's the way --

3 THE COURT: Mr. Bromley, is that the meaning here?

4 MR. BROMLEY: Well, Your Honor, yes.

5 THE COURT: Okay.

6 MR. BROMLEY: But I have to say, we've just been  
7 handed this and haven't had any --

8 THE COURT: Right.

9 MR. BROMLEY: -- conversations with the Committee  
10 about this, so I don't know right now is the right time to  
11 be doing --

12 THE COURT: Well, I want you to -- I mean, I think  
13 it's hand in glove with my two points which is that the  
14 release is a release of the claims for purposes of credit  
15 bidding and recovery in this case.

16 MR. BROMLEY: That's correct.

17 THE COURT: The claims of ESL. However, while the  
18 estate cannot challenge ESL's claims in this case or the  
19 credit bid, the estate has affirmative claims, all are  
20 preserved, in any other way against ESL.

21 MR. BROMLEY: Yes. I think we're complicating  
22 these things a fair bit; right? There are three effective  
23 allegations that the Committee has made against ESL. One  
24 relates to the Land's End transaction.

25 THE COURT: Well, but it's not transactions

1 specific.

2 MR. BROMLEY: No, but I think it's worthwhile to  
3 understand the framework, Your Honor, because that informs  
4 the actual language; right? So -- and that's exactly what  
5 appears to be on Page 7 of this which I've just been handed;  
6 right? There are three things that have been going on that  
7 have been challenged. One relates to Land's End; second  
8 relates to Seritage; and the third relates to the funding  
9 transactions that have taken place. It's the funding  
10 transactions which are related to this sale; right? The  
11 \$2.6 billion that my client has lent to the Debtors. That -  
12 - the challenges to those transactions are the ones that are  
13 being released.

14 THE COURT: Well, not all of them, though. Again,  
15 if -- that's just as to the credit bid. But if it was a  
16 breach of fiduciary duty, for example, to have added into  
17 the funding transaction even though the credit bid stands,  
18 ESL could be liable for breach of fiduciary duty. The  
19 remedy is limited to a claim against ESL as opposed to  
20 against the NewCo or ESL's claim in this bankruptcy case.

21 MR. BROMLEY: Your Honor, you're correct that once  
22 this sale takes place, assuming it does, and the credit  
23 bidding is allowed and the claims are allowed, that the sole  
24 recourse is against ESL --

25 THE COURT: Right.

1 MR. BROMLEY: -- with respect to any claims that  
2 they may have; right?

3 THE COURT: On those points.

4 MR. BROMLEY: On those points --

5 THE COURT: Right.

6 MR. BROMLEY: -- as well as with respect to Land's  
7 End and Seritage.

8 THE COURT: Okay.

9 MR. BROMLEY: It is not -- once NewCo take  
10 possession of these assets, NewCo has these assets, once the  
11 sale closes, there's no challenge with respect to NewCo or  
12 anything that has taken place to facilitate the transaction  
13 that we're talking about here.

14 THE COURT: Okay.

15 MR. QUERESHI: Your Honor, again for the record,  
16 Abid Qureshi on behalf of the Committee. I think it is  
17 clear that there are no claims that can be brought against  
18 reorganized Sears.

19 THE COURT: Right.

20 MR. QUERESHI: Where we struggle is with this  
21 collateral attack --

22 THE COURT: No, but I think -- that's why I just  
23 want to get this on the record.

24 MR. QUERESHI: Right.

25 THE COURT: And similarly, I didn't want there to

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1 be some sort of --

2 MR. QUERESHI: Sure.

3 THE COURT: -- collateral estoppel --

4 MR. QUERESHI: Right.

5 THE COURT: -- argument that because of the  
6 release, these other claims somehow go by the board.

7 MR. QUERESHI: And it's not just collateral  
8 estoppel, Your Honor, or --

9 THE COURT: It could be (indiscernible) agreement,  
10 too.

11 MR. QUERESHI: Right, or the ability to sue for  
12 breach of fiduciary duty. It's the ability to bring a claim  
13 against ESL --

14 THE COURT: Right.

15 MR. QUERESHI: -- for a constructive or  
16 intentionally fraudulent transfer.

17 THE COURT: I agree. I think we're all on the  
18 same page.

19 MR. QUERESHI: Okay. So then we do think there is  
20 some clarification to the language --

21 THE COURT: I agree.

22 MR. QUERESHI: -- necessary --

23 THE COURT: Although, I think everyone knows now  
24 how to clarify it.

25 MR. QUERESHI: It should be clear, Your Honor.

1 THE COURT: Okay.

2 MR. QUERESHI: We will propose a markup, Your  
3 Honor. Thank you.

4 THE COURT: Okay. So you had something else? I  
5 mean, this doesn't stop at Page 7. Is the rest --

6 MR. QUERESHI: Your Honor --

7 THE COURT: Was that the point?

8 MR. QUERESHI: It's all really derivative of --

9 THE COURT: Okay.

10 MR. QUERESHI: -- that point.

11 THE COURT: All right.

12 MR. QUERESHI: It's the financing transactions and  
13 even though they're being credit bid --

14 THE COURT: Well, it doesn't -- I mean, its not  
15 limited to that.

16 MR. QUERESHI: It is not limited --

17 THE COURT: I know that you and the Special  
18 Committee have been working very hard for the last three  
19 months but conceivably you find something else out there.

20 MR. QUERESHI: That's absolutely right.

21 THE COURT: Okay.

22 MR. QUERESHI: Your Honor, one further issue and  
23 it's not directly related to this and I supposed we can deal  
24 with it at the end, but the sale order that has been filed  
25 with the Court includes a new release which is for --

1           THE COURT: No, I -- we'll go over the sale order  
2 at the right time. Okay.

3           MR. SCHROCK: Your Honor, again, Ray Schrock, Weil  
4 Gotshal, for the record. While we were going through some  
5 of these issues a couple of the parties that were read that  
6 we, in fact, resolved the objection, let me know that we  
7 weren't quite, in fact, resolved so I'll just state --

8           THE COURT: Okay.

9           MR. SCHROCK: -- for the record, everybody's  
10 rights are reserved. Come approach us over here and we'll  
11 confirm in fact that if your issue has been resolved. And  
12 Your Honor, just -- you did ask that we just update you  
13 briefly --

14           THE COURT: That's (indiscernible) interrupt you.  
15 So maybe the thing to do there is hopefully before tomorrow  
16 --

17           MR. SCHROCK: Yeah.

18           THE COURT: -- just submit a revised agenda.

19           MR. SCHROCK: We will.

20           THE COURT: File it and give it to chambers that  
21 will reflect what's left.

22           MR. SCHROCK: We will do so, Your Honor.

23           THE COURT: Okay.

24           MR. SCHROCK: Your Honor, in terms of closing  
25 condition, just to let you know how we're progressing to

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1 closing in terms of what's open and closed at least in the  
2 view of the Debtors, just a few issues here. On the KCD IP  
3 license --

4 THE COURT: Right.

5 MR. SCHROCK: -- pursuant to the APA we're  
6 required to deliver one of a number of alternatives and we  
7 did want to note that on January 30th, 2019, the board of  
8 managers of KCD did approve the exclusive license pursuant  
9 to the sale transaction.

10 THE COURT: Right.

11 MR. SCHROCK: On inventory and accounts payable,  
12 pursuant to Section 10.9 of the APA, we were required to  
13 deliver an aggregate amount as of the closing day per  
14 inventory value, the amounts due to the seller respect to  
15 credit card accounts receivable and pharmacy receivables  
16 being at least \$1.657 billion. We believe that as of  
17 February 3rd, the Debtors' project as of the closing date,  
18 the inventory balance will be approximately \$1.597 million -  
19 - or billion and that we believe there'll be approximately  
20 \$33 million of mitigating items such that in the aggregate  
21 the Debtors will have a balance of 1707 -- \$1.707 billion  
22 for above the necessary, so we'll satisfy that condition.  
23 So we've been tracking it daily and it's very tight  
24 transaction, but we believe we'll satisfy it.

25 Similarly on the DIP financing, we are required to

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1 deliver and aggregate amount that's no greater than \$850  
2 million under the DIP and \$350 million under the Junior DIP.  
3 We believe that the DIP, ABL facility balance as of the  
4 closing date, and that's this Friday, would be \$940 million  
5 and 350 but we believe there's essentially mitigating items  
6 that we've identified related to -- that we'll be able to  
7 bring the DIP balance down to below the 850 so we don't  
8 forecast that being an issue for having the DIP balance.

9 And then finally, Your Honor, there was, I  
10 believe, a revised business plan/budget that was filed by  
11 ESL last evening and just in terms of full disclosure to the  
12 Court, there was a footnote where ESL had raised that there  
13 was \$166 million of assumed liabilities that the Debtors'  
14 view is yes, that's the deal, they're picking them up and  
15 we're happy to walk through it if necessary and I think ESL  
16 had said, listen, we're not sure that's the way the  
17 agreement reads and so we've been talking about that issue.

18 Listen, we're happy to proceed to closing with the  
19 agreement as drafted but if we don't resolve that we're  
20 going to have to talk to Your Honor about that particular  
21 issue. It is \$166 million issue, so ESL and the Debtors  
22 wanted to make sure that you were aware of that, but we  
23 think the agreement's very clear as drafted and there's  
24 effects -- schedules of liabilities relating to these items,  
25 but hopefully we can just resolve it, but to the extent we

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1 don't, when it comes to Thursday, we will be addressing that  
2 item with you.

3 THE COURT: Okay.

4 MR. SCHROCK: With that, I'll turn the podium over  
5 to my partner, Paul -- sure.

6 MR. QUERESHI: Again, for the record, Abid Qureshi  
7 on behalf of the Committee. With respect to this most  
8 recent issue that Mr. Schrock identified, we were quite  
9 surprised late last night to receive this liquidity update  
10 and business plan update from ESL. As we understand it,  
11 Your Honor, if ESL is correct in its interpretation that it  
12 is not taking this liability, that increases the  
13 administrative insolvency hole by \$166 million.

14 So respectfully, Your Honor, we think we're  
15 entitled to know what the deal is before we prosecute this  
16 objection to the sale. But for Mr. Schrock to stand before  
17 the Court and say we're fine working it out after the sale -  
18 -

19 THE COURT: Well, there's a signed contract.

20 MR. QUERESHI: Well --

21 MR. SCHROCK: There is. We're fine enforcing the  
22 agreement as written, Your Honor, and we know the way the  
23 agreement works. We negotiated it. We just signed it a  
24 couple weeks ago and we're happy to live with it. I think  
25 that that's what we're here seeking approval for. It's our

1 motion and we'd like to move forward.

2 THE COURT: Okay.

3 MR. SCHROCK: So with that, Your Honor, I'll turn  
4 it over to Paul Genender.

5 MR. GENENDER: Good morning, Your Honor. Paul  
6 Genender, Weil, Gotshal, and Manges for the Debtors. I'm  
7 going to be brief in this regard. We have -- if I can  
8 approach, I have a schedule of the witnesses in order that  
9 might be useful to the Court.

10 THE COURT: Okay.

11 MR. GENENDER: The best news, as Mr. Qureshi said,  
12 is that the last witness, Mr. Kniffen, will not be presented  
13 live. That'll be done by deposition. We anticipate having  
14 the other witnesses appear live for cross examination.  
15 Also, Your Honor, at this point I wanted to offer into the  
16 record the declaration of Sunny Singh which proves up the  
17 auction-related materials. It's at ECF 2344. For the  
18 Court's information, would offer that into the record at  
19 this point. I don't anticipate there would be cross  
20 examination of Mr. Singh on that regard.

21 THE COURT: Okay.

22 MR. GENENDER: Although, several might enjoy the  
23 opportunity.

24 THE COURT: Okay. Well, that's Tab 45 in my  
25 binder; right?

1 MR. GENENDER: Yes.

2 THE COURT: And that attaches, as you said, a  
3 number of documents related to the auction itself. Any  
4 objection to that -- the admission of the declaration and  
5 the exhibits thereto?

6 MR. BROMLEY: No objection, Your Honor.

7 THE COURT: Okay, so that's admitted as D-1.

8 (Debtors' Exhibit D-1 Entered Into Evidence)

9 MR. GENENDER: And then, Your Honor, logistically,  
10 the parties worked hard on exhibits and I think I see in  
11 front of you joint -- you should have a joint exhibit list.  
12 Those reflect exhibits that the parties have agreed would be  
13 admitted, and then anything else would be taken up at that  
14 time with the party objecting to the admission of an  
15 exhibit.

16 THE COURT: Okay.

17 MR. GENENDER: With that, I'm going to turn the  
18 podium over to my partner, Jared Friedmann, who's going to  
19 call our first witness.

20 THE COURT: Okay.

21 MR. GENENDER: Thank you.

22 MR. FRIEDMANN: Thank you, Your Honor. Jared  
23 Friedmann, Weil, Gotshal and Manges on behalf of the  
24 Debtors. Debtors call Brandon Aebersold, Lazard and  
25 respectfully submit into the record his declaration which

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1 was filed as ECF 2335. It should be Tab 40 in your binder.  
2 Mr. Aebersold is in the courtroom today and available should  
3 there be any cross examination required.

4 THE COURT: Okay. I've reviewed that declaration.  
5 Does anyone want to cross examine Mr. Aebersold on his  
6 declaration?

7 MR. SORKIN: Yes, Your Honor.

8 THE COURT: Okay, so if you could come up and sit  
9 over here, please. Just have a seat. Could you raise your  
10 right hand, please? Do you swear or affirm to tell the  
11 truth, the whole truth, and nothing but the truth, so help  
12 you God?

13 MR. AEBERSOLD: I do.

14 THE COURT: And it's A-E-B-E-R-S-O-L-D?

15 MR. AEBERSOLD: That's correct.

16 THE COURT: Okay. All right. Before we get into  
17 cross, Mr. Aebersold, I have your declaration here. I  
18 appreciate that it is quite recent, dated February 1st,  
19 2019, but sitting here today, would this constitute your  
20 direct testimony?

21 MR. AEBERSOLD: Yes, indeed.

22 THE COURT: Okay. All right, so you can go ahead  
23 on cross.

24 MR. SORKIN: Thank you, Your Honor. For the  
25 record, Joseph Sorkin from Akin Gump on behalf of the

1 Creditors' Committee.

2 CROSS EXAMINATION OF BRANDON AEBERSOLD

3 By MR. SORKIN:

4 Q Good morning, Mr. Aebersold.

5 A Good morning, Mr. Sorkin.

6 MR. SORKIN: Your Honor, if I might, we have  
7 prepared witness (indiscernible) for Mr. Aebersold so we  
8 don't have to flip through the larger exhibit binders.

9 THE COURT: Okay.

10 MR. SORKIN: Can I approach, Your Honor?

11 THE COURT: Yes. Do you have one for him? Okay.

12 Q Mr. Aebersold, you were retained or Lazard was retained  
13 by the Debtors as of October 11th, 2018 in connection with  
14 this particular engagement; correct?

15 A That's correct.

16 Q And if you look at what is Tab 1 in the binder I just  
17 handed you, that has been marked Joint Exhibit 146.

18 A I see it.

19 Q And Mr. Aebersold, is Joint Exhibit 146 Lazard's  
20 engagement letter in this matter?

21 A Yes it is, prior to the amendment.

22 Q And that amendment was an amendment approved by the  
23 Court in December or January of this year; that's correct?

24 A That's correct.

25 Q And pursuant to the engagement letter Mr. Aebersold,

1 Lazard agreed to serve as the Debtors' investment banker to  
2 provide general restructuring advice and advise in  
3 connection with any restructuring, financing, and if  
4 mutually agreed by the Debtors and Lazard, any sale  
5 transaction; correct?

6 A That's correct.

7 Q And Lazard had not been asked to run the sales process  
8 by the Restructuring Committee as of the date of the  
9 engagement letter, October 11, 2018; is that correct?

10 A That's correct. I'm not actually sure the  
11 restructuring committee had been formed by -- as of October  
12 11th. I don't believe so.

13 Q Okay. And Lazard had a role in negotiating the  
14 economic terms of the consideration being provided by ESL in  
15 their successful bid that is the subject of today's hearing;  
16 correct?

17 A That's correct.

18 Q And why don't we start with the issue that was just  
19 raised.

20 MR. SORKIN: Your Honor, if we could mark as --  
21 just for the record, Joint Exhibit 178. Your Honor, Joint  
22 Exhibit 178 is Bates marked ESLUCC-00006747 and this is the  
23 liquidity forecast that Mr. Schrock referred to earlier and  
24 we received late last night. If I might approach the  
25 witness and the Court, Your Honor?

1 THE COURT: Okay.

2 Q Mr. Aebersold, if you could take a minute to look at  
3 Exhibit 178 and tell me if you've seen this document before  
4 today?

5 A I have not.

6 Q Before you heard Mr. Schrock talk about the issue with  
7 respect to the \$166 million in accounts payable liabilities,  
8 were you aware of that issue, or a dispute, or a potential  
9 dispute between ESL and the Debtors on that issue?

10 A Generally, yes.

11 Q And can you tell me what your understanding of that  
12 dispute is?

13 MR. GOLD: Objection, Your Honor, to the extent  
14 that it calls for privileged communications.

15 THE COURT: Okay. If you can do that without  
16 revealing privileged communications, you can answer that.  
17 Otherwise, I'll sustain the objection.

18 MR. AEBERSOLD: I'm tangentially aware of it, as  
19 it's been an issue discussed as it relates to conversations  
20 related to the APA. In our view, that is informed by the  
21 view of counsel.

22 THE COURT: Okay. So, you don't need to answer  
23 that question, then.

24 Q Mr. Aebersold, if you could look at the first -- excuse  
25 me -- in the binder I handed you, it's actually prior to

1 half -- there's a copy of your declaration. Do you see  
2 that?

3 A I do. Thank you.

4 Q Can you turn to Paragraph 37, please?

5 A Okay.

6 Q Okay. In Paragraph 37, he outline a number of items  
7 that set forth the consideration that ESL has agreed to  
8 commit as consideration in connection with the successful  
9 bid before the Court, correct?

10 A That's correct.

11 Q And if you look at (iv), there are a number of  
12 administrative liabilities that are being assumed. Do you  
13 see that?

14 A Yes.

15 Q And one of those is accounts payable. Do you see that?

16 A I do.

17 Q And in terms of the accounts payable, pursuant to the  
18 APA, ESL agreed to assume up to \$166 million of accounts  
19 payable, correct?

20 A That's correct.

21 Q And it's your understanding that those accounts payable  
22 were with respect to items that had been ordered and  
23 received by the Debtors post-petition and pre-close,  
24 correct?

25 A Could you repeat that for me?

1 Q Sure. And let me ask it a little more broadly. It's  
2 your understanding that the \$166 million in accounts payable  
3 could be used to pay for up to \$166 million of accounts  
4 payable, whether goods or services, obtained by the Debtors  
5 post-petition and pre-closing, correct?

6 A I believe so, yes.

7 Q There, in your mind, was not any limitation with  
8 respect to when an item or a service was received, other  
9 than in that time period, correct?

10 A I don't believe so.

11 Q Can you tell me what your understanding is? Maybe  
12 there was a negative in there that you and I talked past  
13 each other.

14 A Yeah.

15 Q I think you might have agreed with me.

16 A I think I do agree with you why I am -- I'm not trying  
17 to be coy here. The reason I'm delayed in terms of these  
18 responses is as it relates to the asset purchase agreement  
19 and that language, again, that would be privileged because  
20 that's their view of the contract.

21 Sitting there when we were negotiating that  
22 provision, the way you explained it is generally how I  
23 interpreted it at the time.

24 Q And just so we're clear today, as we discussed during  
25 your deposition, I'm not asking for your interpretation of

1 the APA. I want to understand your businessperson's  
2 understanding of the deal that was struck between ESL and  
3 the Debtors. Can we have that agreement?

4 A Yes.

5 Q Okay. And if you look at what's now been marked as  
6 Exhibit 178, can you flip to Slide 7?

7 A Tab 7?

8 Q No. I'm sorry, Slide 7 on Exhibit 178.

9 A Apologies. Thank you.

10 Q And I apologize for doing this. I'm going to have to  
11 get my glasses. I'm going to direct you to Footnote 10, and  
12 it foots to a change in A/P, accounts payable. And if you  
13 could look at Footnote 10 and tell me if you can read that?

14 A I can read the footnote, but where is the footnote in  
15 the table?

16 Q If you look up under the budget overview, it is the  
17 10th line down.

18 A I see it.

19 Q And Mr. Aebersold, can you read Footnote 10 into the  
20 record, please?

21 A "Debtors have asserted that the APA obligates buyer to  
22 assume up to \$166 million in accounts payable with respect  
23 to, 1, inventory already included in the \$1.553 billion of  
24 inventory acquired a closing, and 2, expenses the Debtor has  
25 incurred prior to closing.

1           Buyer disputes this interpretation of the APA and  
2       any obligations to assume accounts payable that relate to  
3       any of the \$1.553 billion of inventory acquired a closing,  
4       or any such expenses incurred prior to closing.

5           The amount reflects accounts payable of \$126.3  
6       million in February of 2019, \$31.4 million in March 2019,  
7       and \$8 million in April 2019, as well as a corresponding  
8       receipt of merchandise inventory in respect thereof after  
9       the closing date."

10          I was not prepared for an eye exam today and I may  
11       have missed a few, but some small print there.

12          Q       And Mr. Aebersold, is your understanding of the  
13       business agreement that the Debtors struck with ESL  
14       consistent with what ESL indicates is the Debtors' assertion  
15       in Footnote 10 in the first sentence?

16          A       Yeah, I think I agree with their assertion of what we  
17       believe.

18          Q       And can you take a minute to look at Paragraph 37 in  
19       your declaration?

20          A       Okay.

21          Q       It appears to me that the Debtors and ESL don't have a  
22       meeting of the minds with respect to the accounts payable  
23       consideration identified in Paragraph 37. Are there any  
24       other provisions in Paragraph 37 a thinking you think you  
25       think you have a good day off that sitting here today you're

1 aware of the Debtors and ESL don't have a meeting of the  
2 minds on?

3 A I don't believe so.

4 THE COURT: Well, I'm sorry. What you mean by  
5 meeting of the minds? There's a contract? So, you're  
6 talking about positions that people have taken as to how to  
7 interpret the contract?

8 MR. SORKIN: Let me ask the question a little bit  
9 differently, Your Honor.

10 Q Mr. Aebersold, are you aware of any other disputes with  
11 respect to what the agreement was with respect to any of the  
12 other items of consideration in Paragraph 37?

13 MR. GOLD: Objection again. Clarity as to whether  
14 or not the question about what the agreement was or the  
15 agreement is, given that we have a signed contract at this  
16 point?

17 THE COURT: We're still at it, right, what the  
18 agreement is?

19 MR. GOLD: (indiscernible)

20 MR. SORKIN: Not that I'm aware of.

21 THE COURT: Okay.

22 Q Okay. Mr. Aebersold, let's actually stay on Paragraph  
23 37 and walk through. Item 1, you identify, is a cash  
24 payment of \$885 million. Do you see that?

25 A Yes.

1 Q That the \$850 million in the ABL DIP that will be part  
2 of the new ABL facility, correct?

3 A Part of that, correct?

4 Q The \$35 million is the consideration for the credit bid  
5 release, correct?

6 A Yes, correct?

7 Q You were not involved in the negotiations of the \$35  
8 million consideration for the credit bid release, correct?

9 A I was not.

10 Q And the next item, if we move to 2, we're now talking  
11 about the credit bid that was part of that and quite a bit  
12 of secured DIP facilities totaling \$1.3 billion. Do you see  
13 that?

14 A Yes, I do.

15 Q In addition to the \$1.3 billion credit bid, there is  
16 also an additional hundreds of millions of dollars of ESL  
17 claims that are allowed in connection with the agreement to  
18 allow them to credit bid, correct?

19 A Yeah, to formulate a credit bid. Yes, that's the case.

20 Q And your understanding, though, is the credit bid  
21 amount is \$1.3 billion. In addition, there were claims  
22 above and beyond \$1.3 billion of ESLs that were allowed in  
23 connection with the \$35 million release, correct?

24 A They have claims in excess of \$1.3 billion. Whether or  
25 not they're allowed or how you characterize them, I can't be

1       sure.

2       Q     And that was a negotiation that was handled by the  
3           Restructuring Subcommittee, and not part of what you did,  
4           correct?

5       A     Which piece of it? The ability to credit bid or what  
6           this amount is?

7       Q     The \$35 million, the credit bid, the release, and then  
8           the allowed claims associated with that.

9       A     I was confused because you asked me about the size of  
10          the credit bid and the \$1.3 billion, whether there were  
11          claims in excess of that amount. We did have a role in that  
12          \$1.3 billion credit bid. And the negotiation on the \$35  
13          million with respect to being able to credit bid, we were  
14          not a part of that.

15      Q     If you move forward to (iii), an assumption of secured  
16          debt totaling \$621 million, do you see that?

17      A     I do.

18      Q     And that is made up of the \$271 million standalone LC  
19          facility, correct? Part of it?

20      A     Yes, part of it.

21      Q     And the other part is the \$350 million Junior DIP,  
22          correct?

23      A     That's correct.

24      Q     And is any part of that \$621 million being credited?

25      A     I don't believe so.

1 Q In connection with the agreement, the negotiations as  
2 to your business understanding, was there a release for  
3 Cyrus agreed to as part of those negotiations at the  
4 auction?

5 A I'm not aware.

6 Q You're not aware one way or the other, or you don't  
7 believe there was?

8 A I'm not aware one way or the other.

9 Q If we can look now at the assumption of administrative  
10 liabilities in (iv)? Do you see that?

11 A Yes, I do.

12 Q Okay. The first category, severance obligations and  
13 other employee claims, what are those?

14 A I believe the company has severed employees post-  
15 petition. So, there are severance obligations that would be  
16 administrated claims, that are a portion of that, as well as  
17 other employee claims.

18 Q Okay. And ESL agreed to assume up to \$43 million of  
19 those liabilities, correct?

20 A I don't have the number here in front of me, but it was  
21 up to some amount.

22 Q If it helps, you can flip in your binder to Tab 2,  
23 which has been marked Joint Exhibit 35. It is the material  
24 terms of the successful bid. Have you seen Joint Exhibit  
25 35, Mr. Aebersold?

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1 A Yes, I have

2 Q And if you turn to Page 3 -- excuse me, Page 5, I  
3 apologize -- in (ix), which is a carryover from the prior  
4 page assumption of liabilities, do you see that the  
5 severance reimbursement obligation shall not exceed \$43  
6 million in the aggregate? Do you see that?

7 A I do.

8 Q Does that refresh your recollection that \$43 million  
9 was the amount agreed to?

10 A Yes, it does. Thank you.

11 Q In terms of other employee claims, are you aware of  
12 what's contained in other employee claims that the buyer is  
13 assuming?

14 A Not specifically.

15 Q At the time of the auction, do you know what the  
16 Debtors estimated the severance obligations and other  
17 employee claims to be?

18 A Sitting here today, no. I know that we had provided --  
19 we had a schedule of those amounts that we have discussed.  
20 But I can't recall off the top of my head.

21 Q If you could flip in your binder to Tab 8, which has  
22 been marked Joint Exhibit 141? Mr. Aebersold, can you take  
23 a minute to look at Joint Exhibit 141 and tell me what that  
24 is, please?

25 A This is a presentation prepared by Lazard that was sent

1 to the Restructuring Committee on the Wednesday evening,  
2 which was January 16th, related to the ESL bid.

3 Q And Mr. Aebersold, if you look at Slide 1 of Exhibit  
4 141, on Slide 1, the administrative another priority claims  
5 estimated by the Debtors at the time of the auction is shown  
6 on the left side of the table, correct?

7 A Correct.

8 Q And underneath, there are other priority claims. So,  
9 it's administrative claims at the top, other claims that the  
10 bottom. Do you see that?

11 A Yes.

12 Q And then on the right side is additional value and  
13 sources of value that are required. Do you see that?

14 A Yes.

15 Q And at the time of the auction, a pro forma additional  
16 value required in the gold box listed on Slide 1 was \$62  
17 million, correct?

18 A Yes.

19 Q Okay. And if we go back to the severance obligations  
20 that we were talking about, you'll see on the left-hand  
21 side, there's a \$20 million number, correct?

22 A Correct.

23 Q And then underneath it, employee claims is \$8 million?

24 A Yes.

25 Q And you don't know how those numbers were determined at

1 the time of the auction, do you?

2 A Well, let's back up a second here. I think this  
3 presentation and this template, we had become accustomed to  
4 using with the Restructuring Committee as we were gauging  
5 what's the shortfall for cash to close the transaction, as  
6 well as this point of administrative solvency, both of which  
7 were important.

8 The build upon administrative claims had been a  
9 work in progress since the time of filing. And so,  
10 throughout the pendency of the case, there's constantly  
11 updates in schedules being produced, again, that feed into  
12 the company model, which we understood all those numbers  
13 came together.

14 But to put this together in the 20 and the 8,  
15 again, we asked for an updated number, looking at the  
16 company's most recent number, understanding where those  
17 numbers came from. And that is what informed our view of  
18 administrative claims on January 16th.

19 So, the numbers being generated by the company in  
20 their current model, that's the most -- as of that time, the  
21 best and most current estimate of what those numbers were.

22 Q And Mr. Aebersold, I understand you're familiar with  
23 documents that Lazard prepared in the course of its  
24 engagement with Sears. What I'm asking specifically is, the  
25 \$20 million and the \$8 million, you don't know specifically

1 how those numbers were determined, what the specific buildup  
2 is, do you?

3 A Sitting here today, I don't. But I could assure you,  
4 we have seen a schedule of that buildup and talked with the  
5 company's management about how they're estimating that.

6 Q Do you know what those claims are estimated at now?

7 A I can't recall specifically. I know it's a number  
8 we've been tracking, but what the latest estimate is, I  
9 don't remember.

10 Q With respect to how those claims will get paid post-  
11 close, you don't know what the mechanics are of that,  
12 correct?

13 A Are you asking whether ESL pays, or NewCo pays it  
14 directly, or if the estate is to pay it directly? Is that  
15 the question?

16 Q I'm asking you the mechanics of how those claims get  
17 paid, whether the Debtors are responsible for first paying  
18 the claims and then seeking a reimbursement from ESL, or  
19 whether ESL is actually assuming those liabilities and there  
20 is a direct claim from an employee as against ESL?

21 A Understood. Those specific mechanics, I'm not aware.  
22 I can't speak to that.

23 Q Okay. And that's the case, isn't it, with respect to  
24 all of the administrative claims that are being assumed in  
25 (iv) Paragraph 35 in your declaration, correct?

1 A So, which tab was that?

2 Q That's in the front, actually, before the tabs.

3 A Tab 0?

4 Q Tab 0.

5 A That was Paragraph 37?

6 Q Correct.

7 A That's correct.

8 Q Specifically with respect to the category employee  
9 claims of \$8 million on Slide 1, those employee claims don't  
10 include any payroll obligations that the Debtors have to pay  
11 at close, do they?

12 A I'm not sure.

13 Q And do you know -- if I'm looking at the same  
14 information in your declaration, the severance obligations  
15 and other employee claims, those don't include employee  
16 payroll obligations that the Debtors will have to pay at  
17 close, do they?

18 A I don't believe so

19 Q Do you know what the Debtors' estimated payroll  
20 obligations are at close?

21 A I do not

22 Q Do you recall, having been involved in the  
23 negotiations, whether there was an agreement as between ESL  
24 and the Debtors as to who would pay any outstanding employee  
25 payroll claims of the Debtors at close?

1                   MR. GOLD: Objection. He's asking for an  
2 agreement outside of the written transaction agreement.

3                   MR. SORKIN: I'm asking if he has any  
4 understanding of any -- I'll rephrase the question.

5 Q       Are you aware of any negotiations at or before the  
6 auction with respect to whether or not ESL or the Debtors  
7 would be responsible for paying employee payroll claims at  
8 close?

9 A       At any time? I can't be sure.

10 Q      You don't recall the specific discussion about those  
11 claims, do you?

12 A      I do not. Not specifically.

13 Q      Similarly, do you recall any discussion with respect to  
14 employee benefits that the Debtors might have that would  
15 have accrued pre-close, but not be known until public close?  
16 Are you familiar with any negotiations with respect to those  
17 obligations?

18 A      I can remember discussions about those potential  
19 claims.

20 Q      Okay. Tell me what you recall about those discussions.

21 A      I can remember just in the discussion their assumption  
22 of liabilities, post-petition employee claims, as you  
23 stated, being a discussion topic in our estimate of it, and  
24 a conversation generally around could there be additional  
25 claims that would arise post-close.

1 Q And --

2 A That's the extent. I mean, again, this is pretty high  
3 level in terms of -- I can remember the discussion around  
4 it.

5 Q And what was your businessperson's understanding of  
6 what the agreement was, if any, with respect to those  
7 obligations?

8 A Yeah, I can't recall specifically.

9 Q So, would have to look to the APA to know what the  
10 agreement ultimately was?

11 A That's right.

12 Q Okay. Do you have any understanding of what the  
13 estimate of those potential claims are?

14 A I do not.

15 Q With respect to 503(b)(9) claims that are listed --  
16 again, we can stick on Slide 1 of Exhibit 141. The  
17 503(b)(9) claims, the agreement was that buyer, ESL, would  
18 assume a maximum of \$139 million in 503(b)(9) claims, right?

19 A That's correct.

20 Q And the Debtors' estimate of those 503(b)(9)  
21 liabilities at the time of the auction was \$173 million,  
22 correct?

23 A At this particular time of the auction, yes, that's  
24 correct.

25 Q With respect to specifically how that number was

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1 determined, the \$173 million number, you don't know how that  
2 was determined, correct, at the time of the auction?

3 A No, that's not the case, because again, these were  
4 updated numbers, were the best of what we, the company, knew  
5 at that time. But certainly, we had had involvement  
6 throughout the course of the bankruptcy of trying to help  
7 estimate the 503(b)(9) claims.

8 And so, this particular day for 10:20 on January  
9 16th, did I re-review a schedule? No. Unlikely that I  
10 would have. However, throughout the pendency of the case,  
11 we certainly had reviewed schedules in terms of the buildup  
12 of that number.

13 Q Sitting here today, can you describe for me what is  
14 included and what process has been employed to determine the  
15 \$173 million number by the Debtors? In other words, has  
16 there been a reconciliation with the potential 503(b)(9)  
17 claims on the books and what's been filed on the docket,  
18 would be one example?

19 A if I were to describe the process, that would not have  
20 been the process by which we at this point in time and  
21 throughout the pendency of the case were tracking 503(b)(9)  
22 claims. But again, it was a pretty robust exercise on  
23 account of members of the management team and M3 to go back  
24 and look at prepetition payables to have as best estimate as  
25 we could. And we updated that number during the auction on

1 more than one occasion.

2 Q And you're aware that no bar date has been set by which  
3 these claims must be asserted against the Debtors, correct?

4 A I don't believe so.

5 Q Right. And so additional 503(b)(9) claims may be  
6 asserted in the future, correct?

7 A Hypothetically, yeah.

8 Q You're also aware, as part of the negotiations, that  
9 ESL negotiated an extended period of time after close, where  
10 they could pay 503(b)(9) claims, correct?

11 A I remember a discussion around timing with respect to  
12 the mechanics of that, yes.

13 Q And what was your businessperson's understanding of the  
14 agreement that was reached between the Debtors and ESL with  
15 respect to timing of payment for 503(b)(9) claims?

16 A If I remember correctly, the formulation was some date  
17 certain in the future or the timing of a confirmation of a  
18 plan of reorganization. I believe it was the earlier of the  
19 two dates, if I'm not mistaken.

20 Q Do you know what that --

21 A I can't be sure about that.

22 Q Do you know what that date -- the amount of time for  
23 that date future was?

24 A I can recall specifically.

25 Q With respect to accounts payable, were accounts payable

1 included in the agreements between the Debtors and ESL to  
2 have some extended amount of time for ESL to pay those  
3 claims?

4 THE COURT: Is this in the contract? I don't see  
5 why we're asking this. And the contract speaks for itself.

6 Q Mr. Aebersold, with respect to the property taxes that  
7 are identified on Slide 1 -- and I may have asked this  
8 earlier, I apologize -- but you don't have an understanding  
9 of at what point in time or the mechanism by which those  
10 property tax obligations will become due and payable by ESL,  
11 do you?

12 A The mechanics, no.

13 Q With respect to the items identified in Paragraph 37  
14 and (iv), you indicate that that's up to \$482 million in  
15 assumed administrative liabilities, correct?

16 A Sorry, that was at Tab 0?

17 Q Correct.

18 A Yes, correct.

19 Q Do you have any understanding, sitting here today, as  
20 to what the actual amount of those liabilities that will be  
21 assumed is, based on the current estimates of the Debtors,  
22 assuming a February 8th close?

23 A No.

24 Q Any amount less than that would be an amount that is  
25 not taken over, that is not paid as consideration by ESL,

1 correct?

2 MR. GOLD: Object to form. Again, it goes to how  
3 that is dealt with under the APA, which is all written in  
4 the agreement --

5 THE COURT: Well, it's a totality. It says, up  
6 to. Obviously, if there's less, there's less.

7 Q We can move on to the next sentence. You identified  
8 certain items that the successful bid provides the  
9 additional benefits to the Debtors. Do you see that?

10 A Yes.

11 Q The first one is including offers of employment to tens  
12 of thousands of employees, correct?

13 A Correct.

14 Q What was your understanding of a businessperson's  
15 agreement with respect to the obligation that ESL would take  
16 on with respect to those tens of thousands of employees?

17 MR. GOLD: Objection, Your Honor. It's the same  
18 line of questioning. We're asking this witness to recount  
19 his recollection of what the APB provides or doesn't  
20 provide, all of which is before the Court already.

21 THE COURT: Sustained.

22 MR. SORKIN: Your Honor, if I might be heard, as  
23 we've seen already this morning, there are a number of  
24 provisions that appear to be clearly set forth in the APA,  
25 and ESL --

1           THE COURT: He's already testified that he's not  
2 aware of any other disputes. So, you spent 20 minutes going  
3 over stuff that is unnecessary.

4       Q     Are you aware that ESL is planning to cut jobs in 2019?

5       A     No.

6       Q     Are you aware that ESL is planning to sell stores in  
7 2019?

8       A     I do know that they plan to sell some stores.

9       Q     Do you know what -- have you been told by ESL or anyone  
10 else what the plan is with respect to the employees of the  
11 stores they intend to sell?

12      A     No.

13      Q     Do you know how many employees will lose their jobs  
14 over the course of 2019 as a result of the plans that ESL  
15 has?

16           MR. GOLD: Objection, Your Honor. Asked and  
17 answered.

18           THE COURT: Sustained.

19      Q     Let's go to (ii), assuming an additional \$1 billion of  
20 protection agreement liabilities related to consumer  
21 warranties sold by Sears Home Services. Do you see that?

22      A     Yes, I do.

23      Q     Can you tell me how the \$1 billion in liabilities is  
24 calculated?

25      A     Sets the face amounts of liabilities that are currently

1 held up at Sears Re, and the genesis of those is in Sears  
2 stores, Sears sales protection agreements on appliances it  
3 is selling.

4 So, you can imagine, there's a family buys a  
5 dishwasher, they're buying a protection agreement where  
6 Sears is obligated to service and repair that. The  
7 liabilities are at an non-debtor entity, Sears Re, but it  
8 certainly relates to the Sears company.

9 The face amount is \$1 billion; however, we  
10 estimate the net present value of the cost to service those  
11 liabilities closer to \$430 million.

12 Q So, you're not representing in your declaration or to  
13 the Court that there's actually \$1 billion in liabilities  
14 and actual liabilities that ESL will be responsible for  
15 going forward.

16 A Well, let me pick that apart, if I may. It is \$1  
17 billion of liability. However, we think to service those  
18 liabilities, it would cost less than \$1 billion. But also  
19 note that specifically why it's broken out into the "in  
20 addition" sentence, because if they're assuming liabilities  
21 and the company would no -- if the company ceased to exist,  
22 we wouldn't be paying \$1 billion because those claims are  
23 worth a billion -- worth less than \$1 billion. I'm sorry.

24 Q Just to be clear so that I understand it. The \$1  
25 billion is the notional value, in other words, the amount

1       that has been paid by customers to purchase those protection  
2       agreements, correct?

3       A      It is the notional amount, correct?

4       Q      Okay. And the amount on the books of the Debtors with  
5       respect to what it would cost to actually service those  
6       liabilities is roughly somewhere in the neighborhood of \$430  
7       million, correct?

8       A      That's correct.

9       Q      And the actual experience, the actual claims  
10      experience, in terms of historically what it costs, you  
11      don't know what that historical claims experience of actual  
12      costs is, do you?

13      A      That's not correct. That's actually what the 430 from  
14      which it is derived. That's how we estimated what the net  
15      present value of actually servicing that liability is.

16      Q      The next category, cure costs. Your understanding is  
17      that ESL has agreed to assume the cure costs for all leases  
18      for which they assume, correct?

19      A      That's correct.

20      Q      And the estimate by the Debtors at the time of the  
21      auction was that that would be \$200 million?

22      A      If I may flip back to the other exhibit? Flipping back  
23      to Joint Exhibit 141, we have a \$200 million estimate in  
24      here for that number. That's correct.

25      Q      Okay. Do you know how many properties are included in

1       that \$200 million estimate?

2       A      I do not.

3       Q      Do you know what the breakdown is as between the  
4            encumbered and the unencumbered properties in connection  
5            with that \$200 million asset?

6       A      I do not. But I think the salient point here is this  
7            estimate, which was our best estimate at the time, the key  
8            from our perspective in analyzing this is that would be an  
9            obligation of NewCo.

10           So, whether it's \$198 million or \$120 million, for  
11            that matter, the key from our perspective in analyzing this,  
12            because this is the page to say, will we be able to close  
13            and can we maintain administrative solvency?

14           I think the key takeaway here is that's a  
15           liability that's being assumed by NewCo.

16       Q      Understood, Mr. Aebersold. My question was just do you  
17           know how that's broken down as between encumbered and  
18           unencumbered real estate?

19       A      I do not, sitting here today.

20       Q      Sitting here today, do you know whether ESL has assumed  
21           any leases with respect to the 425 go forward stores?

22       A      Are they assuming?

23       Q      Have they assumed?

24           THE COURT: Obviously not. I haven't approved it.

25       Q      Are you aware of a list of the stores that ESL intends

1 to assume going forward?

2 A And not spea -- well, I have to be careful here because  
3 there is the notion that they can assign a lease for this  
4 period for up to 60 days post-closing. I have not seen a  
5 list of what they attend to assume or assign. But for the  
6 most part, we've reviewed a number of schedules in terms of  
7 the assets that are included in their bid, and that includes  
8 leases.

9 Q Okay. And your understanding of the designation rights  
10 is that ESL has up to 60 days post-close to designate or  
11 assign or tell the Debtors to whom to assign any particular  
12 lease in the 425 stores, correct?

13 MR. GOLD: Objection, Your Honor. Again, we're  
14 getting into asking this witness to recount what's in the  
15 APA, which is before the Court.

16 THE COURT: (indiscernible)

17 MR. SORKIN: There is, Your Honor.

18 Q With respect to the benefit in a decision to assign a  
19 particular lease to a third party, who receive the benefit  
20 of any increase in received rent as a result of that  
21 assignment?

22 A I would assume NewCo.

23 Q And during the course of the negotiations, did you have  
24 an understanding as to why NewCo wanted the ability to have  
25 the 60 days to assign the lease?

1 A Not specifically. They never articulated, here's why  
2 we want this and here is our precise plan. It was a  
3 negotiated point and they asked for it. We did ask for some  
4 sharing of any value that was derived from those assets. We  
5 were unable to get that.

6 Q And your understanding was that they wanted that  
7 additional time to market those leases, correct?

8 A Actually, no. I don't know if they're planning to  
9 market.

10 Q With respect to the consideration identified in  
11 Paragraph 37, at any point have you Seen a Document that  
12 sets forth the specific consideration being provided by ESL  
13 in connection with the proposed sale and the assets being  
14 acquired, or proposed to be acquired, by ESL?

15 A Have I seen a document?

16 Q Yes.

17 A The bid summary that you directed me to earlier, as  
18 well as the asset purchase agreement.

19 Q Understood. And what I'm asking more specifically --  
20 and I apologize if I wasn't clear -- is you haven't seen an  
21 allocation of value associated with the consideration being  
22 paid and the specific assets being acquired, have you?

23 A I have not seen an allocation of their bid.

24 Q In terms of going back very quickly to Tab 1, which was  
25 the engagement letter, if you look at -- the easiest number

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1 is at the top, Page 29 of 58 -- and you'll see 1(k)  
2 description of services.

3 A Okay.

4 Q There's a discussion about Lazard's agreements  
5 (indiscernible) in connection with the sales process. Do  
6 you see that?

7 A I do.

8 Q And you began -- Lazard began marketing assets in mid-  
9 October in connection with Exhibit 146, correct?

10 A Yeah. And the reason being we were raising -- as early  
11 as October 10th, and maybe even days before, we were seeking  
12 debtor-in-possession financing.

13 The structure with the Senior DIP and the Junior  
14 DIP is one that we had come up with. And obviously, the  
15 Junior DIP was being raised for what was prepetition  
16 unencumbered collateral. And so, there was a tremendous  
17 undertaking to market those assets initially in order to try  
18 to raise that \$350 million.

19 Q And understood. My question was simply that began in  
20 mid-October, correct?

21 A That's correct. Well, at least Lazard's role in doing  
22 so, yes, mid-October.

23 Q In connection with a provision in the APA -- and again,  
24 I'm not asking you about the APA; I'm asking you about a  
25 specific provision in your business understanding -- you're

1 aware, aren't you, that in connection with the negotiations  
2 there was an agreement with respect to the ABL Dip and the  
3 Junior Dip that the full \$1.2 billion would be drawn at the  
4 time of close, and if not, there were consequences one way  
5 or the other, either over or under, correct?

6 A Sure.

7 Q With respect to -- in the situation where the amount  
8 drawn on the ABL DIP and the Junior DIP was under \$1.2  
9 billion, your understanding is that ESL would receive a  
10 reduction in the amount of liabilities assumed, correct?

11 A That's correct. They were in offset. If the amount  
12 drawn under the DIPS were less than the stated amount, there  
13 was a mechanism to offset liabilities that they were  
14 assuming. That's correct.

15 Q And with respect to your understanding, the reduction  
16 in the amount drawn is actually, in your eyes, a situation  
17 where the Debtors had succeeded in managing costs and drawn  
18 down less on the DIP, correct? On the Junior DIP and the  
19 ABL DIP?

20 MR. GOLD: Object to form and vagueness. I'm not  
21 sure what's asked about in his eyes versus someone else's  
22 eyes, or -- you know, if you have an agreement, really Your  
23 Honor's eyes are the only ones ultimately will matter in  
24 terms of interpreting it. So, I don't understand where this  
25 question is going, and I object to the vagueness.

1 THE COURT: Did you understand the question?

2 MR. AEBERSOLD: I generally do.

3 A We were working extremely hard to manage that DIP  
4 balance to meet our condition precedent to closing. I think  
5 the company's done an extraordinary job. Sitting here  
6 today, we feel pretty good we're going to hit it.

7 To the extent that we do achieve that and beat it  
8 by however many million, it's a high-class problem, if you  
9 will. The net benefit of doing so would accrue to ESL.

10 Q And you would view that as over performance on the  
11 projections with respect to the Debtors, correct?

12 A I would say overachieving what we need to deliver,  
13 sure.

14 Q And your understanding, though, is as a business  
15 understanding, that the offset would simply be a reduction  
16 in liabilities, not both a reduction in liabilities and a  
17 reduction in purchase price, correct?

18 A That's correct.

19 Q Mr. Aebersold, you haven't seen any analysis, or you  
20 can't recall any analysis showing how any additional costs  
21 that would result in the event of a delay to closing beyond  
22 February 8th would be funded, is that correct?

23 A Not entirely. And, again, we went through this line of  
24 questions in my deposition. We -- in the exhibit that I was  
25 shown in my deposition, there was analysis in terms of if

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1 there was a delay to close, how much would be outstanding  
2 under both DIP facilities.

3 And we looked at liquidity projections in the past  
4 -- so that you have an understanding of what it would mean  
5 for this company to delay closing. I haven't seen a  
6 specific analysis that says here's what this one week in  
7 aggregate's going to cost to a decimal point. But I think a  
8 few of the variables we do understand. And I have a view.

9 Q Mr. Aebersold, you mentioned the deposition that  
10 occurred last Thursday. And I'm looking now at Page 128 of  
11 that deposition, Line 21. And I'll simply ask you, did I  
12 ask this question and did you give this answer?

13 Question: Are you aware of any analysis performed  
14 by any of the Debtors or any of their professionals with  
15 respect to how any additional cost that would result from a  
16 delay in closing would be funded?

17 Answer: I can't recall any.

18 Did I ask that question and did you give that  
19 answer?

20 A Yes, you did and I did give that answer. But that's  
21 with respect to --

22 Q Thank you, Mr. Aebersold. No further questions.

23 THE COURT: Does anyone else have questions for  
24 this witness?

25 MR. GOLD: Thank you, Your Honor. I'm Ivan Gold

1 of Allen Atkins and I represent a number of the Debtor's  
2 landlords, and I have a very brief set of clarifying  
3 questions regarding Mr. Aebersold's testimony.

4 In the interest of time, obviously we'll be  
5 working with the Debtors on a number of these issues but  
6 rather than do everybody out of order, this is my  
7 opportunity, so if I may? Thank you.

8 DIRECT EXAMINATION OF BRANDON AEBERSOLD

9 BY MR. GOLD:

10 Q Mr. Aebersold, I guess good afternoon.

11 A Good afternoon.

12 Q I want to ask you a question about the  
13 interrelationship of a couple of the cost estimates that  
14 were used in your valuation. The first is the 200 million  
15 cure cost estimate the committee counsel asked you about.  
16 Do you know who calculated that estimate?

17 A I'm not trying to be clever here, but you said our  
18 valuation of that number?

19 Q Well, that's a component of the valuation, is what ESL  
20 was taking and what ESL is not assuming, correct?

21 A Not necessarily. We have not done a valuation here.

22 Q Okay.

23 A So, I apologize because the word valuation to an  
24 investment banker has a totally different meaning.

25 Q Okay. That's fine.

1                   THE COURT: In other words, your declaration  
2 doesn't put a number on the cure cost? (indiscernible)

3                   MR. AEBERSOLD: That's correct.

4                   Q     Okay, so what is your -- that estimate, the 200  
5 million? Where did that come from?

6                   A     That came from the company's management. An analysis  
7 by in three -- which Lazard had reviewed. Again, it is a  
8 preliminary estimate.

9                   Q     Okay. As part of your review, do you have any  
10 awareness of whether that includes just prepetition amounts  
11 with the definition of cure cost? Or does it include any  
12 amounts that were not paid post-petition?

13                  A     I'm not sure.

14                  Q     Okay. And what is the relationship between the \$200  
15 million in cure cost and the 135 million which you also  
16 asked about for real property taxes?

17                  A     I'm not sure.

18                  Q     Do you have an understanding of whether cures can  
19 include real property taxes?

20                  A     Theoretically, I guess they could.

21                  Q     Well, are you aware under the Debtor's triple-net  
22 operating leases they're responsible either directly on a  
23 monthly basis or on a semiannual or annual basis, depending  
24 on the state, for the payment of property taxes on the  
25 properties that they lease?

1 A That could be the case.

2 Q And if those are unpaid, that would be part of the cure  
3 that would be necessary to assume those leases?

4 A Okay, I don't think I'm the right person to ask about  
5 this.

6 Q Okay. Well, you don't have an understanding of how --  
7 whether the 135 and the 200, to a certain extent, amount to  
8 double counting?

9 A I'm not sure if there's an overlap between the two.

10 Q Okay. Now, with respect to these two numbers, do you  
11 understand that these are caps on the (indiscernible)  
12 liability? In other words, if the 200 million for cure cost  
13 turns out to be 230, whose problem is that?

14 THE COURT: (indiscernible)

15 MR. GOLD: Actually, Your Honor, 2.5 of the APA.  
16 I'm not sure it does.

17 THE COURT: (indiscernible)

18 MR. GOLD: I understand. I'm just...

19 Q Was that part of the negotiation, that these are caps  
20 or are these just estimates?

21 A I can't recall specifically. If you want to direct me  
22 -- the numbers, are you referring to the Lazard analysis  
23 that I was --

24 Q Yes. (indiscernible) was 41.

25 A Is that Tab 7?

1 Q These are just your two numbers that you were asked  
2 about on initial cross by the committee. So, a 200 million  
3 cure cost estimate and 135 real estate estimates. 141, I'm  
4 sorry. Tab 7. Tab 8.

5 A I can't recall if this were a cap or not. As I noted  
6 on cure cost, that was still a developing number. And then  
7 the property taxes, I'm looking at the footnote -- property  
8 tax is -- property taxes estimate is preliminary subject to  
9 further review. I don't believe that number's a cap. I  
10 think that if they're assuming the underlying property, that  
11 they're paying the property taxes. But, again, I'd need to  
12 refer to the APA.

13 Q Okay. And, again, you have no knowledge, even looking  
14 at the footnotes, of how the property taxes might be  
15 included in cure or not? That they could overlap?

16 MR. CICERO: Objection, Your Honor. Asked and  
17 answered.

18 THE COURT: (indiscernible)

19 A I don't know. They could overlap.

20 MR. GOLD: That's all I have, Your Honor. Thank  
21 you.

22 MR. CICERO: For the record, Your Honor, Gerard  
23 Cicero from Brown Rudnick, on behalf of Primark USA Corp.  
24 I'll be very quick. Just a few questions.

25 DIRECT EXAMINATION OF BRANDON AEBERSOLD

1 BY MR. CICERO:

2 Q I believe that you testified that you -- in negotiating  
3 the APA, you had seen schedules of what go-forward stores  
4 are going to be acquired or could be acquired, assumed, or  
5 assigned by ESL?

6 A Yes.

7 Q And do you know about how many stores are part of that  
8 go-forward package?

9 A Well, in terms of the -- as the deal moved, they  
10 assumed more properties, so the list of what's remaining  
11 with the estate is actually pretty short in the successful  
12 bid.

13 Q And are you aware of whether Sears -- in part of that  
14 group of go-forward stores that may be taken on by ESL, are  
15 you aware of whether Sears owns any of those stores in fee  
16 or whether it leases all of those stores from landlords?

17 A They do own certain of those fee simple.

18 Q Okay. And so as part of this sale transaction, those  
19 fee simple stores will be acquired by ESL as part of this --  
20 the global transaction?

21 A My understanding is if not all the overwhelming  
22 majority will be acquired.

23 Q And are you aware of whether Sears -- any of those  
24 stores that Sears owns in fee, whether they lease those  
25 stores to any tenants?

1 A The question is for its stores that they own fee  
2 simple, whether they're the landlord in certain of those?

3 Q Yes.

4 A I'm not sure about that.

5 MR. CICERO: Thank you, Your Honor.

6 THE COURT: Redirect?

7 MR. GOLD?: Yes, Your Honor. Redirect -- just a  
8 couple points of clarification.

9 REDIRECT EXAMINATION OF BRANDON AEBERSOLD

10 BY MR. GOLD?:

11 Q First, Mr. Aebersold, at the end of Mr. Sorkin's  
12 examination, he asked you about a reported inconsistency  
13 between what you testified to today and the answer you gave  
14 at your deposition regarding the extent to which you were  
15 aware of any analysis performed by any of the Debtors or any  
16 of their professionals with respect to how any additional  
17 costs would result from a delay in closing would be funded.  
18 Can you elaborate? I know you were trying to explain the  
19 difference in the questions and your answers. Can you  
20 please do so?

21 A Well, yeah, in my deposition the question was do you  
22 have any sense of what it would cost if there were a delay?  
23 And at the time, I had a document in front of me that  
24 actually showed one of the main inputs is what would be  
25 outstanding on the DIP balance if we were to go past the

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1 closing date, and so I referenced that.

2 The follow-up question was how is the estate going  
3 to fund that amount? And, from my perspective, we've got a  
4 wind-down reserve, we have a number of assets -- when we're  
5 looking at administrative solvency and ability to close the  
6 transaction, there are a number of buckets. But I haven't  
7 seen the matching of -- if there's excess in the wind-down  
8 reserve, how much that would be, and if it would go to fund  
9 these amounts.

10 And we're also talking about an environment --  
11 it's no surprise. We actually, at this point in time, have  
12 showed a shortfall in that amount. And that's been a huge  
13 issue here. We've been trying to bridge that. And so, I  
14 think the question in my deposition was specifically around  
15 how are you going to fund those? Not necessarily what is it  
16 going to cost?

17 Q Thank you. One other point I wanted to clarify. You  
18 may have misspoken. You testified that liability under  
19 protection agreements is with Sears Re, and were you  
20 referring to Sears Re as the customer-facing insured? Or do  
21 you mean it then as a reinsure?

22 A As the reinsure.

23 Q Okay, thank you.

24 MR. GOLD?: Nothing further, Your Honor. Thank  
25 you.

1 THE COURT: (indiscernible)

2 MR. SERKIN: Your Honor, nothing further on that.

3 Just a housekeeping matter. I don't believe that with  
4 respect to the joint exhibits, we were moving them in  
5 wholesale. So I was going to move in certain of those  
6 exhibits.

7 THE COURT: They're all in.

8 MR. SERKIN: They're all in. Okay.

9 THE COURT: (indiscernible)

10 MR. SERKIN: Thank you, Your Honor.

11 MR. GENENDER: Your Honor, Paul Genender, for the  
12 Debtors. We would at this time call William Transier. His  
13 declaration is before Your Honor. It's ECF2336. I'm sorry,  
14 that's not correct. It's ECF2341 and it is in Tab 42, Your  
15 Honor.

16 THE COURT: Does anyone want to cross-examine Mr.  
17 Transier?

18 MR. AUERSHI: Your Honor, again, for the record,  
19 Abid Qureshi of Akin Gump. My partner Lacy Lawrence will be  
20 handling the cross-examination, Your Honor. She's from our  
21 Dallas office. We do have a pro hac vice application that's  
22 been filed with the Court. Thank you.

23 CLERK: Would you raise your right hand, please?  
24 Do you swear or affirm to tell the truth, the whole truth,  
25 and nothing but the truth, so help you God?

1 MR. TRANSIER: I do.

2 THE COURT: It's T-R-A-N-S-I-E-R?

3 MR. TRANSIER: Yes, sir.

4 THE COURT: So, Mr. Transier, I have your  
5 declaration, which is dated...

6 MR. TRANSIER: February 1st?

7 THE COURT: February 1st. Sitting here today,  
8 does that constitute your direct testimony?

9 MR. TRANSIER: Yes.

10 THE COURT: Do you want to change that?

11 MR. TRANSIER: No.

12 THE COURT: (indiscernible)

13 MS. LAWRENCE: Thanks, Your Honor.

14 CROSS-EXAMINATION OF WILLIAM TRANSIER

15 BY MS. LAWRENCE:

16 A Good afternoon, Mr. Transier.

17 Q Good afternoon.

18 A As a reminder, I'm Lacy Lawrence from Akin Gump, here  
19 on behalf of the Unsecured Creditors Committee. We met at  
20 your deposition, is that right?

21 Q That's correct.

22 MS. LAWRENCE: Now, Your Honor, as with Mr.  
23 Aebersold, we've got witness notebooks for this witness as  
24 well. May I approach?

25 THE COURT: (indiscernible)

1 Q Mr. Transier, you currently serve as an independent  
2 director on the Sears Holdings board of directors, is that  
3 correct?

4 A Yes.

5 Q Now, you joined the board on October 11, 2018, is that  
6 correct?

7 A Yes.

8 Q So that's just a few days before the Debtors filed  
9 these Chapter 11 cases, is that right?

10 A That's correct.

11 Q Now, before being appointed to the board, you met with  
12 Mr. Tish as part of your selection, is that correct?

13 A That's correct. Mr. Tish was the chairman of the  
14 Nominating & Governance Committee, and I interviewed with  
15 him to -- prior to being selected to come on the board.

16 Q You anticipated my next question. Now, you understand  
17 that Mr. Tish is a minority equity holder in the buyer, is  
18 that correct?

19 A I understand that, yes.

20 Q Now, Mr. Transier, you were brought on the board for  
21 the express purpose of serving as an independent director on  
22 the Restructuring Committee and the Restructuring  
23 Subcommittee, is that correct?

24 A Yes.

25 Q Now, the Restructuring Committee's purpose is a few --

1 has a few purposes. One was general oversight of the  
2 restructuring process, is that correct?

3 A That was one item.

4 Q And also to review any of the restructuring  
5 transactions in that process, correct?

6 A Yes.

7 Q As well as overseeing the negotiations of any  
8 restructuring deals, is that right?

9 A That is correct.

10 Q And also -- you're also a member of the Restructuring  
11 Subcommittee, is that correct?

12 A Yes.

13 Q Now, the subcommittee has an additional purpose, and  
14 that's to investigate and prosecute estate causes of action,  
15 is that correct?

16 A That was one item.

17 Q Now, those causes of action that you're investigating,  
18 the subcommittee is investigating, included estate causes of  
19 action against ESL and its affiliates, is that correct?

20 A Yes.

21 Q Now, as part of your role, you were also set to approve  
22 or disapprove of the credit bid transaction with ESL, is  
23 that right?

24 A That's correct.

25 Q And the credit bid fell within the scope of the

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1 Restructuring Committee because it involved ESL financings  
2 that had been approved by other board members previously, is  
3 that right?

4 A Could you ask that question again so I'm clear exactly  
5 what you're trying to get at?

6 Q Right. So one of the functions of the Restructuring  
7 Committee has been to approve, or assess, or disapprove of  
8 the credit bid with ESL, is that correct?

9 A Yes.

10 Q Okay. And the reason that credit bid fell to the  
11 Restructuring Committee was because it involved financings  
12 that other board members had been involved in, is that  
13 correct?

14 A No, I believe that that was the responsibility of the  
15 subcommittee.

16 Q Correct. The -- if I --

17 A You said committee.

18 Q I apologize. So that's the responsibility --

19 A It's the subcommittee's responsibility.

20 Q Okay. I'm sure I misspoke. So, the credit bid issue  
21 is the subcommittee responsibility, correct?

22 A That's correct.

23 Q And that's because it involves ESL financings that were  
24 approved by other board members, is that right?

25 A That was part of the reason, yes.

1 Q Okay. Now, part of your job on the Restructuring  
2 Committee was to oversee the marketing of the Debtor's  
3 assets in connection with the sale process, is that right?

4 A Yes.

5 Q And you understood that the company was planning to  
6 pursue bids for both going concern transactions as well as  
7 the possibility of selling some of the Debtor's assets  
8 separately, is that correct?

9 A Yes.

10 Q Now, you viewed the marketing of the Debtor's assets  
11 separately as putting the cart before the horse, is that  
12 correct?

13 A No, I don't believe I said that.

14 Q Okay. Now, do you recall in your deposition describing  
15 it as "cart before the horse?"

16 A If I did, I'd like to look at my deposition and see --  
17 but ask your question, please.

18 Q Okay, well, let me get at it this way. Selling the  
19 assets separately was a little premature given that they  
20 could be part of the going concern bid, is that correct?

21 A I think in my deposition, when asked that question, the  
22 question regarded around the valuations that were there.  
23 And I was commenting as a side comment that in trying to  
24 sell some of these assets while we were trying to do a going  
25 concern bid, you might not get a complete view of what the

1 market clearing prices were on those.

2                   But, in fact, the Restructuring Committee had  
3 oversight over the Lazard process that include not only the  
4 going concern business but several components of the  
5 business along the way. And, in fact, we dealt with several  
6 of those independently during the course of our  
7 Restructuring Committee activities.

8 Q       Speaking specifically to real estate, do you agree with  
9 me that it's important to market real estate assets if you  
10 want to achieve the highest value for those assets, correct?

11 A       If you're assuming that you're going to sell all of  
12 those individual pieces of real estate, yes, they should be  
13 market.

14 Q       And your opinion is that the marketing process for  
15 Sears real estate would take years, is that correct?

16 A       I think I said in my deposition that the market  
17 conditions today have an oversupply of big box real estate -  
18 - my term -- and that it could be difficult to sell these  
19 individual assets, and it might take an extended period of  
20 time.

21 Q       Now, without going through a marketing process, you  
22 would not expect to get the highest value you possibly could  
23 for those real estate assets, is that correct?

24 A       I think that a marketing process is necessary to be  
25 able to market the real estate assets. The way you asked

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1 the question is different than the way I think about it. We  
2 were going -- the Restructuring Committee was overseeing a  
3 simultaneous process that included not only Lazard but a  
4 real estate consulting expert that was capturing indications  
5 of interest for some of these real estate properties as we  
6 were doing the work on the going concern bit.

7 Q And so it's important to market the real estate assets  
8 because that's the way you achieve the highest value you can  
9 for selling those assets, correct?

10 MR. GENENDER: Objection. Asked and answered,  
11 Your Honor.

12 THE COURT: What do you mean by...? It sounds  
13 like a tautology to me. I mean, there's got to be something  
14 more specific than that if you're going to ask it again.

15 MS. LAWRENCE: Fair enough. But let me shift a  
16 little.

17 Q You do not have a lot of confidence in the JLL  
18 indicative bids that were received for the real estate  
19 assets, is that correct?

20 A I think we had been advised by JLL and the rest of our  
21 advisors in the Restructuring Committee meetings that we  
22 had, that those indications of interest -- and there was a  
23 number of them and we saw a log of all those activities --  
24 that we shouldn't take a lot of confidence in those because  
25 of the nature in which we were in in trying to look at

1 restructuring transactions for Sears in total.

2 Q And you would agree with me that, as a businessperson  
3 sitting on the Restructuring Committee, it would be  
4 difficult to go out and market real estate assets if  
5 somebody on the other side was thinking that those assets  
6 were going to be part of a going concern?

7 A No, I think when asked this question in my deposition,  
8 I said exactly the opposite. I said, if we were in a wind-  
9 down or a liquidation mode, I thought it would be very  
10 difficult to get market clearing prices. In fact, I think  
11 just the opposite would be true in a going concern. If you  
12 had those assets, there would be a higher level of  
13 confidence in and around those assets and you should expect  
14 something better. But I answered that question in respect  
15 to a liquidation or a wind-down.

16 Q I want to shift to the ESL bid that was submitted on  
17 December 28th. Do you recall that, that bid?

18 A I do.

19 Q Now, the short version of it is that the Restructuring  
20 Committee decided not to qualify that bid. Do you recall  
21 that?

22 A I do.

23 Q And one of the issues with the December 28, 2018 bid  
24 that you had identified was that ESL had still not complied  
25 with the global bidding procedures requirement to allocate

1 its bid, is that correct?

2 A That's correct.

3 Q Now, following the Restructuring Committee's decision  
4 not to qualify ESL's December 28th bid, there was a chambers  
5 conference, do you recall that?

6 A I do.

7 Q Okay, and that was held on January 4th, is that right?

8 A I think that is correct.

9 Q Now, your understanding from the chambers conference  
10 was that the judge instructed the parties to keep working on  
11 the deal, is that correct?

12 A That was the feedback that we received from the  
13 advisors at our Restructuring Committee meeting.

14 Q And, in fact, your understanding was that the judge had  
15 given the parties marching orders to go on and keep working  
16 on the deal, is that correct?

17 A I think that's the terms I used in my deposition, yes.

18 Q Okay. It was also reported to you that if the  
19 Restructuring Committee found a way to solve this, the Court  
20 would push back on the UCC pretty firmly. Do you recall  
21 that?

22 MR. GENENDER: I object. Hearsay and relevance.

23 THE COURT: I don't see where it's going.

24 MS. LAWRENCE: Your Honor, the perception this  
25 witness has of what the Court would expect or what the Court

1 would want to see the parties accomplish influences the  
2 deliberations and the negotiation of the Restructuring  
3 Committee.

4 MR. GENENDER: Your Honor, I'd also like to  
5 (indiscernible) to the extent they're seeking privileged  
6 information (indiscernible) privileged. That's the source  
7 (indiscernible)...

8 MS. LAWRENCE: So, Your Honor, this witness has  
9 testified previously about what he was told by his advisor  
10 regarding the chambers conference. It appears in his  
11 deposition, it also appears in board minutes. So I think  
12 the privileged claim here is a little late.

13 THE COURT: Okay. And it's not really hearsay; it  
14 was just your understanding, right? It's not for the truth  
15 of what was said. This is what you understood?

16 MR. TRANSIER: Yes, Your Honor.

17 THE COURT: Okay, you can answer that question.

18 A It was my understanding that on the basis of the  
19 chambers conference and the responses that came back from  
20 the advisors who were there in attendance at those chambers  
21 conferences, that they encouraged us to keep negotiating  
22 with ESL to try to get the highest and/or best offer for the  
23 estate. I think that was common sense in terms of what we  
24 were trying to do on the Restructuring Committee, and I  
25 think it was good guidance for all of us involved in this

1 case to keep working hard to see what the ultimate limits  
2 were of any deal that might be accomplished.

3 Q And so you understood that the Court would want to find  
4 a way to save jobs, is that correct?

5 A Say that question to me again?

6 Q Yeah. You understood that the Court would want to find  
7 a way to save jobs, is that correct?

8 A I think the Restructuring Committee had a strong desire  
9 to try to save the business and jobs along the way, and it  
10 was motivated by conversations that occurred, to my  
11 understanding, in the judge's chambers that came back to us  
12 as the Restructuring Committee.

13 Q Now, I want to shift our attention to the auction. The  
14 many long nights and days you had. That started on January  
15 14th. Does that sound about right?

16 A It does.

17 Q Now, you understood walking in to the auction on  
18 January 14, 2019 that the focus of the auction was  
19 negotiations with ESL on its going concern bid, is that  
20 correct?

21 A We had indications that the only party that would be in  
22 the auction process talking about a going concern bid would  
23 be ESL.

24 Q Okay, so there were no other going concern bids,  
25 correct?

1 A That's correct.

2 Q And the sum-of-the-parts bidders were not the priority  
3 for the auction, is that correct?

4 A I wouldn't say that they weren't a priority. I believe  
5 that we went to the auction knowing that we were going to  
6 end up primarily dealing with ESL.

7 Q Now, in terms of attendance at the auction, you do not  
8 know whether any parties seeking entry into the auction were  
9 turned away, do you?

10 A I don't know.

11 Q Okay. Now, January 14th, to give you a little date and  
12 time -- January 14th, the Restructuring Committee made a  
13 proposal and called it its proposed final ask. Do you  
14 recall that?

15 A I do.

16 Q Okay. And the morning of January 15th, ESL rejected  
17 that proposal. Do you recall that?

18 A I remember that.

19 Q Now, after ESL rejected the Restructuring Committee's  
20 final ask, there was another chambers conference with the  
21 Court, do you recall that?

22 A Yes.

23 Q Now, at that time, the Debtors were prepared to close  
24 the auction, correct?

25 A I can't say directly but we didn't close the auction.

1 We did not.

2 Q Okay. But following ESL's rejection of the  
3 Restructuring Committee's proposed final ask, you understand  
4 that the Debtors were prepared to close the auction subject  
5 to the chambers conference. Do you recall that?

6 Q What I remember the Weil attorneys telling us, the  
7 Restructuring Committee, was that they went to have the  
8 chambers conference with the judge and they were going to  
9 inform him that we couldn't get to a going concern bid. And  
10 I took that as they were giving a heads up of where we were  
11 in the auction process and that the likely scenario would be  
12 that we would close the auction thereafter.

13 Q Now, from that chambers conference, your advisors  
14 reported that the parties were given very strong  
15 encouragement by the judge to make a last attempt to get to  
16 the finish line that night. Do you recall that?

17 A Well, those are your words. My words are that what I  
18 remember being feedback to us was that upon notification to  
19 the judge in regards to where we were in the negotiations  
20 with ESL -- the term I remember was from I think it was Mr.  
21 Schrock that represents the company, was that the judge felt  
22 like we were close and we should take one more kind of round  
23 of discussions with ESL to see if we could close the gap.

24 Q Now, Mr. Transier, you said those were my words. I  
25 want to be very clear. They were not my words. Will you

1 turn to Tab 6 in the notebook in front of you?

2 A Tab 6?

3 Q And I'll direct your attention to Joint Exhibit 149.

4 And you see in Joint Exhibit 149 you should have a set of  
5 January 16, 2019 Minutes of the Meeting of the Restructuring  
6 Committee of the Board of Directors of Sears Holding  
7 Corporation. Do you see that?

8 A Yes.

9 Q Now, under Committee Members Present it lists you as  
10 being present in person. Do you see that?

11 A That was I was present, yes.

12 Q Okay. Now, if you look toward the bottom of that first  
13 page of Joint Exhibit 149, you see a paragraph that begins  
14 with "Mr. Schrock reported that..." Do you see that?

15 A Yes.

16 Q And it says, "Mr. Schrock reported that during the  
17 chambers conference earlier that day, ESL through their  
18 counsel and the committee..." -- that refers to the  
19 Restructuring Committee through its counsel -- "were given  
20 very strong encouragement by the judge to make a last  
21 attempt to get to the finish line that night with  
22 documentation to be completed, if necessary, the following  
23 day." Do you see that?

24 A I do.

25 Q And you don't have any reason to disagree with that, do

1 you?

2 A No. This is the minutes from the meeting.

3 Q Now, moving forward a little bit later in time, late in  
4 the evening of January 15th and early in the morning of  
5 January 16th, ESL made what it described to be its final  
6 proposal. Do you recall that?

7 A Generally, yes.

8 Q Okay.

9 A The days ran together.

10 Q No, I'm --

11 A And I was there the entire time.

12 Q I'm sure. Now, the Restructuring Committee ultimately  
13 voted to accept that proposal, correct? The ESL final  
14 proposal on January 15th?

15 A I don't recall if exactly ESL's proposal was the one  
16 that was accepted or there was other negotiations that  
17 occurred, but ultimately we came to a deal with ESL.

18 Q Okay, fair enough. Now, in your direct testimony, your  
19 declaration, you noted that the January 15th bid from ESL --  
20 so the one that was accepted -- included substantial  
21 improvements from the initial ESL bid. Do you recall that  
22 testimony?

23 A I do.

24 Q Now, I want to walk through just a couple of those  
25 improvements. One that you mention in your direct testimony

1 is this: That ESL took on more liabilities to substantially  
2 narrow the gap on the administration solvency risk. Do you  
3 recall that?

4 A I do.

5 Q Now you say "narrow the gap" and I want to understand  
6 what you meant by that. Throughout the Restructuring  
7 Committee's deliberations, there had been discussion and a  
8 consideration of administrative solvency, is that correct?

9 A Yes.

10 Q Now, despite this importance that the committee had  
11 placed on administrative solvency, the ESL bid did not close  
12 that gap, correct?

13 A It didn't close the gap completely, no.

14 Q Correct. And even -- in fact, even at the time you  
15 voted to accept the ESL bid, your advisors had told you that  
16 there was a \$62 million administrative claim shortfall, is  
17 that correct?

18 A Based upon the calculation that they put in front of  
19 us, yes, there was a \$62 million shortfall.

20 Q Okay. But you viewed that 62 million to be within the  
21 realm of reasonableness, is that correct?

22 A Yes. And it was based upon conversations during our  
23 Restructuring Committee meeting with all of the advisors,  
24 both the advisors for the company as well as the advisors  
25 for the subcommittee. And I think I specifically asked to

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1 those folks, including our chief restructuring officer, you  
2 know, what they felt like...

3 This is a huge corporation with billions of  
4 dollars flowing through it. I used to run a company, so I  
5 know that there are lots of things that you can manage in  
6 the process. The question was have we identified the big  
7 items, and has it been narrowed down to a number?

8 That 62 million at one point was several hundred  
9 million dollars, and the chief restructuring officer as well  
10 as the representative from Lazard who spoke earlier, as well  
11 as the chief financial officer all felt like this was a  
12 reasonable number to be able to try to manage on behalf of  
13 the estate going forward.

14 So on the basis of everybody understanding what we  
15 had in terms of this amount, we all felt like that we had  
16 worked the number to a point that was reasonable to accept.

17 And I'd just add one other thing, including  
18 we've had about 60 Restructuring Committee meetings since I  
19 joined this company. We had another one last night and got  
20 an update just last night from the chief restructuring  
21 officer, and that number has come down now. The best  
22 estimate is 35 million. That number will obviously vary  
23 because there's just a lot of moving parts as we've talked  
24 about here today.

25 Q Now with that 62 million shortfall that you were told

1 about in connection or at the end of the auction, you were  
2 also told by your advisors that there might be amounts due  
3 in connection with the KCD royalties. Do you recall that?

4 A I do.

5 Q And that amount totaled approximately 112 million; is  
6 that correct?

7 A We had a footnote on that schedule, as I recall, that  
8 -- that had 112 million. I think that was considered to be  
9 the max or the -- the biggest potential exposure on  
10 that. But we had seen numbers in the course of the time  
11 frame that we had been looking at this issue from 30 million  
12 on the low side to 112.

13 If I recall, what was given to us as advice during the  
14 course of that was that it was something that the attorneys  
15 felt like that they could manage their way through.

16 Q Now another one of the material changes in your view  
17 was ESL's agreement to let the Debtors keep the \$6 million  
18 ship deposit. Do you recall that?

19 A I don't remember saying that that was a significant  
20 item. It was \$6 million, though.

21 Q Okay. Now you understand that Service.com is  
22 challenging the Debtor's ability to keep that deposit,  
23 correct?

24 A I've been told that, yes.

25 Q Okay. And you understand that they are challenging it

1 based at least in part on ESL's conduct; is that correct?

2 A I don't know though for a fact.

3 Q Okay. And that \$6 million that could be used to close  
4 the gap, you understand that the Debtors may never see a  
5 penny of it; is that correct?

6 A I can't -- I can't speak to that. I think we have the  
7 deposits, so it's a question of whether we have to give it  
8 back.

9 Q Now we mentioned this earlier, but allocation of the  
10 big has come up. And you understand that the bidding  
11 procedures approved by the Court require allocation,  
12 correct?

13 A I recall that the original bidding procedures approved  
14 by the Court had a provision in there to provide for  
15 allocation, and I viewed that as the opportunity to  
16 understand for components of the bid that you could compare  
17 that to along the way.

18 Q Now I believe that you've acknowledged that you haven't  
19 focused on the allocation issues. Instead, your focus was  
20 on the total bid amount; is that correct?

21 A Yeah, the totality of the bid.

22 Q So at least as of your deposition, you had not seen an  
23 allocation for the ESL bid, correct?

24 A That's correct.

25 Q And sitting here today you have not seen anything

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1 showing how each piece of ESL's credit bid was allocated to  
2 specific assets that ESL was purchasing; is that correct?

3 A I had not.

4 Q Now, when ESL made what it described as its final  
5 proposal, the Restructuring Committee had a board meeting,  
6 correct, or had a meeting?

7 A Yes.

8 Q And, in fact, that's what we just looked at, the  
9 minutes for that meeting were Joint Exhibit 149. Now during  
10 that meeting, the Restructuring Committee advisors were  
11 there; is that right?

12 A Yes, they were.

13 Q And Mr., excuse me for messing this one up, but Mr.  
14 Meghji was there; is that correct?

15 A Yes,

16 Q And he's --

17 A -- our chief restructuring officer.

18 Q -- the CRO, correct? Now he noted at that meeting that  
19 administrative solvency could not be assured with the ESL  
20 final bid; is that correct?

21 A Is that what it says in the minutes? If you'll point  
22 me to it.

23 THE COURT: Let's assume they said that. Why  
24 don't you go to your next question?

25 MS. LAWRENCE: Okay.

1 BY MS. LAWRENCE:

2 Q And you also understand that Mr. Aebersold from Lazard  
3 was there, correct?

4 A Yes.

5 Q Now he indicated that there was a risk that there would  
6 not be enough cash to close the transaction in order to  
7 become administratively solvent, correct?

8 A He -- I remember him saying that, but he also went on  
9 to say that he thought it was not an unreasonable risk to  
10 take this on in this -- in this circumstance.

11 Q And then let me direct you on Joint Exhibit 149, the  
12 second page. If you look at the paragraph in the middle of  
13 that page that begins "Mr. Aebersold." Do you see that?

14 A Yes.

15 Q And the last sentence of that paragraph says, "Mr.  
16 Aebersold expressed disappointment, however, with the ESL  
17 final bid." Do you see that?

18 A I see that.

19 Q Okay. Now before accepting the revised ESL bid, you  
20 agree with me that the Restructuring Committee did not  
21 consult with the UCC board before accepting that bid?

22 A Say that question one more time. I don't think I agree  
23 with you, but say it again.

24 Q Sure. Before accepting that final bid from ESL, so the  
25 Restructuring Committee gets the ask from ESL, deliberates,

1 and accepts it, you agree with me that the Restructuring  
2 Committee did not consult with the UCC at that time?

3 A I -- I can't answer directly. I -- I know that the UCC  
4 and all of their advisors were in the hallways with us 'til  
5 the wee hours of multiple mornings in a row. I know that  
6 there was lots of communications going on between the  
7 attorneys and the UCC, but I -- you know, in terms of this  
8 specific ask, I don't -- I think they were, but I -- I don't  
9 know for sure.

10 Q Okay. Sitting here today, you do not know for sure  
11 whether the UCC was consulted before the Restructuring  
12 Committee accepted that final ask, correct?

13 A The UCC and you and your colleagues were involved in  
14 everything we did for -- from the very beginning of this  
15 thing all the way to the conclusion. So if you're asking  
16 about that specific ask, I know we ended up going into the  
17 auction room and everything was spelled out there, so I  
18 don't -- I don't know for sure.

19 Q I want to shift gears to the go-forward business plan  
20 presented to you. So in early January, you and others had a  
21 call with Mr. Lampert to discuss the recent ESL bid; is that  
22 correct?

23 A We did. We had a joint meeting between the  
24 Restructuring Committee and ESL.

25 Q Now that meeting was focused on the bid but also

1 discussed the business plan for the go-forward business; is  
2 that correct?

3 A I believe I asked during the course of the meeting for  
4 -- to Mr. Lampert directly for him to talk about what his  
5 plans were for the go-forward business.

6 Q So there was a high-level discussion at that meeting,  
7 correct, or during that call, correct?

8 A There was.

9 Q But you did not have a copy of the business plan from  
10 ESL at that time; is that correct?

11 A We did not. I -- I actually asked for it during the  
12 course of that conversation.

13 Q Now the day before the auction started on the afternoon  
14 of January 13th, the Restructuring Committee received a copy  
15 of the go-forward business plan for the first time; is that  
16 correct?

17 A That's correct.

18 Q Now this was the -- scratch that. Between the time you  
19 received the business plan and then accepted the ESL bid,  
20 you did not have any diligence sessions with ESL to discuss  
21 aspects of the business plan or the underlying assumptions  
22 for that business plan, correct?

23 A We -- we did not have any conversations with ESL, but I  
24 would say that we reviewed it as members of the  
25 Restructuring Committee. And I had asked as one of the

1 members of the Restructuring Committee for our advisors to  
2 review that, including our chief restructuring officer. It  
3 was important because that presentation that was given to us  
4 which was relayed to us during the conversation with Mr.  
5 Lampert that night was this was a business plan presented to  
6 a group of the potential lenders in the new code going  
7 forward. And to me, it was important to understand what had  
8 been presented to them. And then we had our advisors take a  
9 look at it, as well as I did.

10 Q Upon receiving that business plan letter before  
11 accepting the ESL bid, you did not have the opportunity to  
12 walk through that business plan with ESL; is that correct?

13 A We did not.

14 Q Now when you got this business plan the day before the  
15 auction, you became aware of ESL's plan to close three  
16 stores each month in 2019; is that correct??

17 A I think that was disclosed in that business plan, yes.

18 Q And you described that at your deposition as running  
19 the business property; do you recall that?

20 A I said that it didn't surprise me that -- that the  
21 business plan would have an assumption in there that they  
22 would close up to three stores a year going forward. I  
23 viewed that as their oversight of running the business on a  
24 go-forward basis.

25 Q Now you have no idea which stores are going to close,

1       correct?

2       A     I do not.

3       Q     And you have no idea how many employees that will  
4       impact, correct?

5       A     I do not.

6       Q     And let me just clarify because I want to make sure I  
7       heard it correctly. It's three stores each month in 2019,  
8       correct, not just three stores for the year?

9       A     I remember that the three stores, and we could get the  
10      business plan out. I can't remember exactly how  
11      (indiscernible), but I remembered three stores.

12      Q     So sitting here today, you're unclear whether the  
13      business plan required three stores --

14      A     Let's -- let's take a look at it right quick, and we  
15      can tell you, okay? I think you've got it someplace.

16      Q     I do, as a matter of fact.

17      A     But in either case, their ability to run the business  
18      properly going forward, it should -- should be their  
19      responsibility.

20      Q     But you have no idea which stores are going to close,  
21      correct?

22      A     I do not.

23      Q     And you have no idea how many stores during 2019 are  
24      going to close, correct?

25      A     During 2019, I do not.

1 Q Okay. And you have no idea how many employees that  
2 will impact; do you?

3 A I do not.

4 Q And you have no idea how many stores after 2019 would  
5 close, correct?

6 A I don't.

7 Q Now from this business plan, you also became aware of  
8 ESL's plan to sell 200 million of real estate each year for  
9 the next three years; do you recall that?

10 A I remember that being in the business plan as -- as an  
11 assumption.

12 Q Okay. Now that's -- if my math's right, 600 million  
13 over three years, correct?

14 A That's correct.

15 Q Now you have no idea what that means in terms of  
16 employee reductions, correct?

17 A No.

18 Q Or whether that \$200 million number, that \$200 million  
19 per year number could be higher, correct?

20 A It could be higher; it could be lower.

21 Q Now you also understand from the ESL business plan that  
22 there are planned head-count reductions, correct?

23 A Ask that question one more time.

24 Q Yeah. You understand from the ESL business plan that  
25 there are planned head-count reductions, correct?

1 A Yes.

2 Q But sitting here today, you don't know the magnitude of  
3 those planned reductions; do you?

4 A I do not.

5 Q And you understand that the APA does not have a  
6 guarantee of continued employment, correct?

7 A It does not.

8 Q Now as part of the subcommittee, one of the things you  
9 were tasked with is investigating certain pre-petition  
10 conduct; do you recall that?

11 A Yes.

12 Q Now that includes certain spinoff transactions,  
13 correct?

14 A Yes.

15 Q Like the Lands' End transaction, right?

16 A That's correct.

17 Q As well as the rights offering involving Seritage,  
18 correct?

19 A Yes.

20 Q Now in connection with both of those transactions,  
21 Lands' End and Seritage, the subcommittee is investigating  
22 certain acts by ESL, correct?

23 A Yes.

24 Q As well as certain acts by Mr. Lampert, correct?

25 A Yes.

1 Q Now when you joined the Restructuring Committee and  
2 subcommittee on October 11th, 2018, you had never met Mr.  
3 Lampert; is that correct?

4 A That's correct.

5 Q Now shortly after you joined the Board or maybe right  
6 at the same time that you joined the Board but right before  
7 the company filed for bankruptcy, you attended a board  
8 meeting where you heard Mr. Lampert speak, correct?

9 A Yes.

10 Q And that was the board meeting ultimately where it was  
11 decide that the company should file for bankruptcy, correct?

12 A That's correct.

13 Q Now flip in your notebook to what was marked as Joint  
14 Exhibit 148. So that would be Tab 5.

15 Are you there, Mr. Transier?

16 A Yes.

17 Q So Tab 5 of your notebook is Joint Exhibit 148, which  
18 is an email exchange between you and Mr. Lampert; do you see  
19 that?

20 A I do.

21 Q And the date of the email is October 15th, 2018; do you  
22 see that?

23 A Yes.

24 Q And the subject line of the email was "Very impressed;"  
25 do you see that?

1 A I do.

2 Q Now the first line of the email says, "Just a note to  
3 say how impressed I was personally in the way you handled  
4 the board meeting last night." Do you see that?

5 A Yes.

6 Q And then it goes on to say in the very last line, "All  
7 my best for a continued" -- or "all my best for success as  
8 you and Sears move through this next phase in their 125-year  
9 history. With your leadership, I am optimistic that there  
10 are good things to come." Do you see that?

11 A I do.

12 Q Now you sent this email to Mr. Lampert after the board  
13 meeting authorizing the Chapter 11 filing, correct?

14 A Yes.

15 Q Now you testified that you felt compelled to send it  
16 because of your own personal experience with deciding to  
17 file Chapter 11, correct?

18 A That's correct. I was -- I was compassionate for the  
19 gentleman that was part of the decision process to get  
20 there. And I think I explained at my deposition to you that  
21 I had in a prior life been the CEO of an international oil  
22 and gas company that I put the original capital into and  
23 then ultimately because of a natural disaster and some other  
24 things, the company was -- had to go into Chapter 11. I  
25 know how painful that is as a CEO.

1           And I thought that -- that evening I was actually in  
2 Italy, so it was early in the morning that I was listening  
3 in on this -- this call and I thought the way that it was  
4 handled by Mr. Lampert was -- and there was one other thing  
5 that happened during the course of that meeting was that he  
6 stepped down as CEO and they created the office of the CEO.  
7 A very tough thing to do no matter who you are and when lots  
8 of employees that you've been associated with for a long  
9 period of time.

10           Obviously, I was new to the board and to me, this  
11 was just a matter of a cheering-up comment from one former  
12 CEO to a current -- to a newly former CEO, Mr. Lampert.

13 Q       And based on this email marked as Joint Exhibit 148,  
14 you believed that Mr. Lampert acted with integrity, correct?

15 A       I do. During the --

16 Q       And grace?

17 A       -- course of that meeting, yes.

18 Q       And grace, correct?

19 A       Yes.

20 Q       Now this is the same Mr. Lampert that the subcommittee  
21 at that time and currently is investigating, correct?

22 A       That's correct.

23 Q       But the purpose of your email was to give Mr. Lampert  
24 some positive feedback, correct?

25 A       It was.

1 Q Because, as you put it, sometimes as a CEO, you don't  
2 get much positive feedback; is that correct??

3 A That's correct.

4 MS. LAWRENCE: I'll pass the witness, Your Honor.

5 THE COURT: Okay.

6 MR. PERDEW: Your Honor, my name is Russell  
7 Perdew. I'm here on behalf of the Pension and Benefit  
8 Guaranty Corporation. We filed a motion for my pro hac vice  
9 admission. Obviously, it was just last week. You've not  
10 had a chance to read it yet. May I proceed?

11 THE COURT: Actually I think I've read all the pro  
12 hacs through Friday, so.

13 MR. PERDEW: Very good.

14 THE COURT: But you can go ahead.

15 MR. PERDEW: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PERDEW:

18 Q Mr. Transier, you were asked some questions about the  
19 KCD \$112 million line item. Do you remember that?

20 A I do.

21 Q And is that in addition to the \$62 million  
22 administrative shortfall that you mentioned earlier?

23 A It could be, yes.

24 Q Okay. Right. I understand there was -- the 112 was a  
25 range. And you said that the \$62 million you felt was

1 reasonable and manageable given the size of the company; is  
2 that right?

3 A That's correct.

4 Q If you added the 112 million to it, would that number  
5 still be something that was manageable and reasonable in  
6 your opinion?

7 A I would say yes because of the feedback that we got  
8 from the advisors during our Restructuring Committee meeting  
9 that I don't sit here today and quite understand all the  
10 legal issues involved with that royalty payment and stuff,  
11 but the attorneys felt like that there was a way in which to  
12 negotiate a settlement and handle that.

13 So it was considered that evening, but it was an  
14 unknown there that evening when we made our decision.

15 Q And you had said before the attorneys told you that  
16 that KCD claim was manageable; is that right?

17 A I think I just said that, yes.

18 Q And was that the Weil Gotshal firm?

19 A I think they were one of the advisors that said that,  
20 but all the advisors were in the room with us that -- that

21 --

22 Q Okay.

23 A -- that night.

24 Q And did the Weil Gotshal attorneys say how they plan to  
25 manage the KCD claim?

1 A They did not.

2 UNIDENTIFIED SPEAKER: (Indiscernible), Your  
3 Honor.

4 MR. PERDEW: Your Honor, ten years ago I would  
5 have been quick enough to get up. I'm not as young as I  
6 used to be.

7 THE COURT: So it's moot?

8 MR. PERDEW: Yeah. Thank you. Nothing further,  
9 Your Honor.

10 THE COURT: Okay. I don't know how long this is  
11 going to be, but I only have about ten more minutes. Okay.

12 MR. GOLDSTEIN: I'll do it.

13 THE COURT: Okay.

14 MR. GOLDSTEIN: Good afternoon, Your Honor.

15 Michael Goldstein, Goodwin Procter, attorney for Urban Edge.  
16 We -- Urban Edge, our landlord owned four properties. Your  
17 Honor, I have questions for the witness with respect to one  
18 of the paragraphs in his declaration.

19 THE COURT: Okay.

20 MR. GOLDSTEIN: I suspect it'll take longer than  
21 ten minutes, but I'm happy to start.

22 THE COURT: Well, why don't you start. We'll see.

23 DIRECT EXAMINATION

24 BY MR. GOLDSTEIN:

25 Q Mr. Transier, did I pronounce that correctly?

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1 A It's Transier.

2 Q Transier.

3 A Yes.

4 Q Excuse me. I've been sitting in the back with the --

5 A It's okay.

6 Q -- (indiscernible) and can't hear exactly. I also have  
7 almost as much gray hair as you, so I'm catching up slowly.  
8 I haven't done for a while, though, I'm hoping we can get  
9 through this pretty quickly.

10 Do you have before you your declaration that you  
11 submitted?

12 A I do not.

13 MR. GOLDSTEIN: I apologize, Your Honor. I don't  
14 have copies of the exhibit binder. But if somebody could --  
15 BY MR. GOLDSTEIN:

16 Q Okay. It's the first tab in your binder, Mr. Transier,  
17 if we could turn to that. Do you see that?

18 A Okay.

19 Q You'll see a declaration.

20 A Yes.

21 Q And if you would turn to Page -- and I'm going to see  
22 if it's actually been marked by pages numbers. It's not  
23 marked by page numbers, so it would be Page 17, Paragraph 37  
24 of your declaration. Have you gotten there?

25 A I am.

1 Q Okay. And if I could turn your attention to the last  
2 sentence of that paragraph of your declaration starting  
3 with, "After carefully considering." Do you see that  
4 sentence?

5 A Give me just a second to read it, please.

6 Q Yeah. I was going to ask you to do that, so please go  
7 ahead and do so.

8 (Pause)

9 MR. TRANSIER: Yes.

10 MR. GOLDSTEIN: And I should have asked, Your  
11 Honor, I assume you have a copy of that.

12 THE COURT: I have it.

13 MR. GOLDSTEIN: Thank you.

14 BY MR. GOLDSTEIN:

15 Q Mr. Transier, in that sentence that you just read, do  
16 you state in part, "Analyzing the same with the Debtor's  
17 advisors." Could you identify for me who are the Debtor's  
18 advisors that you're specifically referring to in that  
19 sentence of your declaration?

20 A Well, I think I was referring to all of them, but  
21 primarily, it would have been Lyle Bradshaw, the Lazard  
22 folks, as well as M3 who were our financial advisors.

23 Q So Lyle, Lazard, and M3. Any other of the Debtor's  
24 advisors that you were --

25 A I know we -- I know we also had under engagement a real

1 estate firm called JLL, but we -- and the subcommittee also  
2 had its own set of advisors. But you're talking the --

3 Q Excuse me. You're not referring to the subcommittee;  
4 are you?

5 A I am not.

6 Q Thank you.

7 A But they were all in the room.

8 Q Thank you. But you're not referring to them here in  
9 this sentence, correct? It says the Debtor's advisors.

10 A Yes.

11 Q Thank you. Now when you say, "analyzing the same with  
12 the Debtor's advisors," specifically, what analysis are you  
13 referring to? I'm not asking for the details, Mr. Transier,  
14 but what was the subject matter of that analysis?

15 A I'm not sure what exactly you're getting at and I -- I  
16 would go back to this entire paragraph. We -- in these  
17 meetings, we had various presentations to us which have been  
18 talked about here today.

19 Q So were you referring to a specific presentation by one  
20 of the Debtor's advisors?

21 A I -- I don't recall.

22 Q Okay. So something else specific in terms of the  
23 analysis that you can recall that you're referring to in  
24 this sentence?

25 A I think in general in this -- in my declaration, I was

1 referring to --

2 Q Excuse me, Mr. Transier. Please, I'd hate to disrupt

3 --

4 THE COURT: He is answering it.

5 MR. GOLDSTEIN: I'm asking about a specific  
6 paragraph, Your Honor, not this entire declaration.

7 THE COURT: Yeah. It's Paragraph 37, the last two  
8 sentences. And he's responding to it.

9 MR. GOLDSTEIN: Then I apologize.

10 MR. TRANSIER: I was just trying to --

11 THE COURT: "The Restructuring Committee also  
12 analyzed and discussed the differences between the ESL  
13 business plan and the company's historical business plans,"  
14 et cetera. Plus their commitment to third party financing.  
15 So the lawyer wants to know if there's a specific written  
16 analysis of that or whether it was discussed.

17 MR. TRANSIER: Yes, sir. What I was trying to say  
18 was that we used one of these presentations that had been  
19 talked about previously that spoke to the overall analysis  
20 of the -- the bid from ESL and the things that we talked  
21 about earlier that the administrative solvency gap as  
22 well as this KCD thing, that's in general what I was  
23 referring to.

24 THE COURT: I think he's -- I think this counsel's  
25 interested in the adequate assurance issue.

1 MR. TRANSIER: Okay.

2 MR. GOLDSTEIN: We'll get there, Your Honor.

3 Thank you.

4 BY MR. GOLDSTEIN:

5 Q And I appreciate -- Judge Drain is correct. I was  
6 focusing, Mr. Transier, on a specific written presentation.  
7 Perhaps, let me ask you more specifically there. With  
8 respect to the advice you got from the Debtor's advisors,  
9 did you receive a specific written presentation with respect  
10 to the estimated sources and uses of cash at the closing of  
11 this transaction?

12 A At this particular time, we --

13 Q Yes.

14 A -- we had along the series of meetings that we had, we  
15 had several of those that we looked at.

16 Q Do you have an understanding, Mr. Transier, of how many  
17 -- how much assumed liabilities ECL, the buyer is assuming  
18 that they'll have to pay post-closing, the total dollar  
19 amount is?

20 A We could look back at that schedule, but I -- if I  
21 recall, there was seven, eight hundred million dollars.

22 Q So you were here in the courtroom when Mr. Aebersold  
23 was testifying earlier, correct?

24 A I was.

25 Q And he talked about the in Paragraph 37 of his

1 declaration, the assumption of various liabilities including  
2 a number for payables and taxes of up to \$482 million. Do  
3 you recall that?

4 A I remember that discussion.

5 Q And do you also recall there was a discussion about  
6 assumption of protection agreements, liabilities?

7 A I do.

8 Q And you recall the discussion around that where Mr.  
9 Aebersold testified that the approximate book net of the  
10 value of that liability is approximately \$400 million?

11 A I don't know that he called it a book net present  
12 value. As I recall his testimony here earlier, he talked  
13 about the protection agreement's nominal amounts were a  
14 billion dollars, roughly. And he said that the present  
15 value calculation of that, not net book value, was by those  
16 large estimates and maybe the company's estimates 440  
17 million or 438 million.

18 Q Thank you, Mr. Transier. Your position on the  
19 accounting terminology is much better than mine. I  
20 appreciate that clarification. And do you also recall Mr.  
21 Aebersold's testimony when he talked about cure costs that  
22 would be assumed of up to \$200 million?

23 A Yes.

24 Q Okay. So if my simple math is correct, it would be  
25 over a billion dollars approximately of assumed liabilities?

1 A I don't think that's the way that you would do the  
2 math. I think you would take the -- but there was a --  
3 you're talking about cure costs now, and there's -- there's  
4 other things that were included in this bid, right?

5 Q I'm just talking about the dollar amount for assumed  
6 liabilities. What was the total amount of the assumed  
7 liabilities if the buyer is the one who has to pay in cash  
8 post-closing?

9 A Yeah. Can we get the schedule out and we'll go through  
10 them one by one? How's that?

11 Q Sure.

12 MR. GOLDSTEIN: Your Honor, if I can --

13 MR. TRANSIER: 'Cause there was property taxes.  
14 There was severance.

15 THE COURT: I'm going to take a break, and you  
16 should prepare more. And you can come -- when we come back  
17 tomorrow morning, you can resume. Please be a little more  
18 focused, all right?

19 MR. GOLDSTEIN: Thank you.

20 (Proceedings concluded at 1:31 p.m.)

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1 C E R T I F I C A T I O N

2

3 I, Sonya Ledanski Hyde, certified that the foregoing  
4 transcript is a true and accurate record of the proceedings.

5

6 **Sonya**  
7 **Ledanski Hyde**

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25 **Date: February 5, 2019**